

# HOUSE BILL REPORT

## HB 2461

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### As Reported by House Committee On:

Public Safety  
Appropriations

**Title:** An act relating to seriousness level I offenses where the offender score is three to five on the drug offense sentencing grid.

**Brief Description:** Concerning the drug offense sentencing grid.

**Sponsors:** Representatives Kagi, Goodman, Ormsby and Santos.

### Brief History:

#### Committee Activity:

Public Safety: 1/15/18, 1/25/18 [DP];

Appropriations: 2/3/18, 2/6/18 [DP].

#### Brief Summary of Bill

- Makes prior temporary changes to the sentencing grid for drug offenses permanent.

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### HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** Do pass. Signed by 6 members: Representatives Goodman, Chair; Pellicciotti, Vice Chair; Appleton, Chapman, Orwall and Pettigrew.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Griffey, Holy and Van Werven.

**Staff:** Kelly Leonard (786-7147).

### Background:

For felony convictions, the Sentencing Reform Act (SRA) provides the framework for determining the length of sentences. Base sentences are determined by reference to a sentencing grid, which provides a standard range of months of confinement. This range is

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based on both the severity, or "seriousness level," of the offense and the convicted person's "offender score," which is based on the offender's criminal history. While the grid provides the base sentence, additional sentencing policies can increase or decrease a sentence. This includes, for example, enhancements, exceptional sentences, and alternative sentences.

Felony drug offenses are sentenced according to a specialized drug sentencing grid under the SRA. Prior to 2013, a person with an offender score of three to five who was being sentenced for a drug offense ranked at seriousness level I would have a presumptive sentence range of six to 18 months. In 2013 the drug grid was changed to narrow the presumptive range for an offender meeting these criteria to six to 12 months. The narrowed range is temporary and expires July 1, 2018, at which time the former presumptive sentence range of six to 18 months is reinstated.

The drug offenses ranked at seriousness level I include: Forged Prescription; Manufacturing, Delivering, or Possession with Intent to Deliver Marijuana; Possession of a Controlled Substance; and Unlawful Use of a Building for Drug Purposes.

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 prison facility. An offender who receives a sentence of confinement of less than one year must serve that term of confinement in a local jail.

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**Summary of Bill:**

The prior modifications to the drug grid remain in effect indefinitely. A person with an offender score of three to five who is being sentenced for a drug offense ranked at seriousness level I will be subject to a presumptive sentence range of six to 12 months of confinement.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect on July 1, 2018.

**Staff Summary of Public Testimony:**

(In support) In 2013 the Legislature reduced sentencing for nonviolent drug crimes for certain classes of offenders. The Legislature established base ranges of six to 12 months instead of six to 18 months. This had the effect of keeping people in jails in their communities as opposed to sending them to prison. More than 125 people will go to prison each year if the state allows these changes to expire. Failing to extend these changes would result in a serious impact to the prison system. The prisons are at 103 percent capacity, and

this could increase it to 107 percent based on projected growth. This is not sustainable. It endangers inmates and staff and makes it difficult to provide effective programming.

Drug use is a public health concern, and it should be treated that way when involving nonviolent drug crimes. This class of offenders do not belong in prison. They should be kept in their communities, either in a local jail or in local programming.

(Opposed) The Legislature made these prior changes to reduce corrections' costs. The state faced a budget crisis, and shifting this class of offenders from prisons to local jails saved the state \$2.5 million per year. This was at the expense of local governments, as it simply shifted people from state prisons to local jails. Local governments do not have the ability to raise revenue or reduce costs beyond what state law authorizes or prescribes. There was a reason there was a sunset on these changes. It was done to ensure local governments that it was a temporary solution. The state needed to get through the fiscal crisis, which it was able to do. Now it is time for the state to take back the responsibility. Local governments cannot afford to take the hit anymore.

**Persons Testifying:** (In support) Representative Kagi, prime sponsor; and Alex MacBain, Department of Corrections.

(Opposed) James McMahan, Washington Association of Sheriffs and Police Chiefs.

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

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** Do pass. Signed by 21 members: Representatives Ormsby, Chair; Robinson, Vice Chair; MacEwen, Assistant Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Bergquist, Cody, Fitzgibbon, Hansen, Harris, Hudgins, Jinkins, Kagi, Lytton, Pettigrew, Pollet, Sawyer, Senn, Springer, Stanford, Sullivan and Tharinger.

**Minority Report:** Do not pass. Signed by 12 members: Representatives Chandler, Ranking Minority Member; Buys, Caldier, Condotta, Graves, Haler, Manweller, Schmick, Taylor, Vick, Volz and Wilcox.

**Staff:** Rachelle Harris (786-7137).

### **Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Public Safety:**

No new changes were recommended.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect July 1, 2018.

**Staff Summary of Public Testimony:**

(In support) In 2013 the previous straddle cell for low level drug offenders was changed so that offenders would have a presumptive jail sentence. The bill makes this grid change permanent. For the past 20 years the Legislature has prioritized prison beds for those offenders convicted of the most serious and violent felonies. Currently, about 70 percent of the Department of Correction's (DOC) confinement population has been convicted of a crime against a person, while only 7 percent have their most serious offense as a drug offense. Prison beds have been and should be reserved for the most serious violent felonies, and the bill is consistent with this position. The current DOC population currently exceeds capacity and there will be continued population growth. The Caseload Forecast Council projects that the DOC will be at 107 percent of capacity by 2026. The bill reduces the average daily population in prison by 125, which will help to alleviate the strain on our overcrowded prisons.

(Opposed) None.

**Persons Testifying:** Alex MacBain, Department of Corrections.

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