

SENATE BILL REPORT

SB 5539

As Passed Senate, February 12, 2018

Title: An act relating to creating a pilot program for the supervision of motor vehicle-related felonies.

Brief Description: Creating a pilot program for the supervision of motor vehicle-related felonies.

Sponsors: Senators Billig, Padden, Pedersen and Baumgartner.

Brief History:

Committee Activity: Law & Justice: 2/01/17, 2/08/17, 2/09/17 [DP-WM, w/oRec].
Ways & Means: 2/15/17, 2/06/18 [DP, DNP, w/oRec].

Floor Activity:

Passed Senate: 2/12/18, 46-1.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Establishes a pilot program for the supervision of persons convicted of motor vehicle related felonies in Spokane County.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel, Frockt and Wilson.

Minority Report: That it be referred without recommendation.

Signed by Senator Darneille.

Staff: Shani Bauer (786-7468)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

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.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair; Billig, Carlyle, Conway, Darneille, Hasegawa, Hunt, Keiser, Mullet, Palumbo, Pedersen, Ranker, Rivers, Van De Wege and Wagoner.

Minority Report: Do not pass.

Signed by Senators Braun, Ranking Member; Bailey, Becker, Brown, Schoesler and Warnick.

Minority Report: That it be referred without recommendation.

Signed by Senator Fain.

Staff: Travis Sugarman (786-7446)

Background: Prior to the adoption of the sentencing guidelines in 1984, every person convicted of a felony was eligible for community supervision. When the state enacted determinate sentencing guidelines, however, it eliminated parole and probation supervision. Over the years, Washington reinstated the use of community supervision and adopted various changes to supervision policy.

- In 1999, Washington enacted the Offender Accountability Act, which directed the Department of Corrections (DOC) to conduct risk assessments of individuals convicted of felony offenses and to direct more resources to supervising high-risk individuals. The state reinstated post-release supervision for individuals sentenced to prison for drug, violent, and crimes-against-persons offenses, but not for property offenses.
- In 2003, Washington eliminated post-release supervision for individuals who were only on supervision for outstanding legal financial obligations, as well as for certain low-risk individuals, reducing the state's supervision population from approximately 65,000 to 30,000.
- In 2009, Washington eliminated post-release supervision for low- and moderate-risk people sentenced to jail or prison for a drug, violent, or crime-against-persons offenses, further reducing the number of people on supervision to below 20,000.

Today, only the following people are eligible for supervision: individuals released after serving a sentence for either a sex offense or a serious violent offense; high-risk individuals released after serving a sentence for a drug, violent, or crime-against-persons offense; individuals who receive a sentencing alternative; and certain domestic violence offenders.

In 2014, Washington was selected to participate in a Justice Reinvestment Initiative (Initiative) through the assistance of the Council of State Governments Justice Center (Justice Center). The Initiative proposed to conduct a comprehensive study of Washington's criminal justice system to identify ways to address growing pressures on the prison system and increase public safety.

In January 2015, a report was presented focusing almost exclusively on the high property crime rate in the state. Washington has consistently had one of the highest reported property crime rates in the country, yet is the only state where supervision is not available as a sentence for most people convicted of property offenses. Analysis from the Justice Center found that Washington's prison population is growing, in part, due to an increasing number of

repeat property offenders being sentenced to prison for long lengths of stay. In fiscal year 2013, nearly one-third of total prison admissions were for property offenses. In comparison, other states with sentencing guidelines have much lower prison sentences for repeat offenders, but incorporate mandatory periods of supervision. The Initiative recommended modifying the sentencing grid to decrease standard sentence ranges for repeat property offenders while increasing supervision to hold property offenders accountable in the community and provide treatment, where needed.

Summary of Bill: Subject to the availability of amounts appropriated for this purpose, a pilot program is established in Spokane County for the supervision of offenders convicted of felonies relating to the theft or taking of a motor vehicle.

Until June 30, 2021, the Spokane County Superior Court may sentence an offender to community custody for up to one year when the offender is sentenced to the custody of DOC for:

- theft of a motor vehicle;
- possession of a stolen vehicle;
- taking a motor vehicle without permission—1st or 2nd degree; or
- a crime against property with a prior conviction for one of the above motor vehicle crimes.

DOC must supervise any offender sentenced to community custody as provided. No later than November 1, 2022, DOC must submit a report to the Governor and Legislature analyzing the effectiveness of supervision in reducing recidivism among motor vehicle property offenders. DOC must consult with the Washington State Institute for Public Policy in guiding its data tracking efforts and preparing the report.

This section expires December 31, 2022.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony (Law & Justice): *Testimony from 2017 Regular Session.* PRO: Property crimes are a challenge in Washington State and Washington is one of the only states that does not have supervision. This bill is a common sense approach to see if we can get back into a program that has proven successful. Spokane's goal is to be the safest city of its size. Property crime dropped last year with the exception of motor vehicle crime. The Spokane Police Chief has implemented a variety of tactics to reduce crime, including hiring 30 new officers and implementing body cameras. However, motor vehicle crime has been elusive.

Spokane has adopted a smart justice lens to find out what works to rehabilitate people in the criminal justice system and reduce victims in the community. Spokane recently rolled out a

new assessment to assess the risk and needs of offenders in the system. The judge can order supervision when it is indicated by the assessment. Evidence shows if you tailor treatment to the specific offender you will reduce the likelihood that they will commit another crime. This bill holds the vision that community supervision can add structure for offenders reentering the system and connect them with services including drug treatment, education and job training. Some people are skeptical that supervision can work. We are hoping that data will show that the program is successful and can be an effective tool in avoiding future crime around the state.

Spokane has struggled with property crime for several years and is currently number three in the state for vehicle thefts. A number of offenders who commit property crimes are repeat offenders. Sentences are fairly low in length due to sentencing guidelines. Law enforcement feels helpless as to what can be done to address the revolving door. Despite best efforts, vehicle thefts were up 22 percent last year along with vehicle prowlings. Law enforcement is currently tracking 25 individuals they know are actively engaged in vehicle theft. Those 25 individuals are responsible for approximately 1500 other charges. There is no opportunity to intervene when these offenders reenter into the community. Community supervision will be an effective tool in the arsenal of courts and police to address this behavior.

CON: This bill treats one segment of property offenders different than other property offenders across the state simply based on the geography of their crime. This is an equal protection violation. These offenders will be subject to additional penalties in the form of a term of community custody, delayed time in release in order to come up with an approved release address, and limitations as to where they can live after release.

Persons Testifying (Law & Justice): PRO: Senator Andy Billig, Prime Sponsor; Chief Craig Meidl, City of Spokane P.D.; Tony Hazel, Spokane County Prosecuting Attorney; David Condon, Mayor, City of Spokane; Breean Beggs, Spokane City Council.

CON: Kari Reardon, WA Association of Criminal Defense Lawyers, WA Defenders' Association

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.

Staff Summary of Public Testimony (Ways & Means): *Testimony from 2017 Regular Session.* PRO: Washington has one of the highest property crime rates in the country and is the only state that doesn't have supervision for property offenders. This is an attempt to have a pilot project to see if it makes some reduction to recidivism on property offenders. While property crimes are not considered to be against a person, many people have been subject to these crimes and can feel violated. Vehicle theft crimes were up last year by 22 percent in the City of Spokane. We also know that vehicle thieves are often involved in other crimes. Spokane is ranked number three in the state for vehicle thefts. We believe that treatment through supervision will lead to rehabilitation and reduce crime in our community; it is truly a smart justice approach. This pilot will make drug treatment, mental health services, and job training available. We are trying to do some innovative things in Spokane through this bill and our MacArthur Grant. This bill would allow the state to dip its toe back into supervising property crime offenders. The research has been done into the constitutionality of this project. Under Washington jurisprudence this would clearly meet the rational basis test if

challenged. *State v. Little* does look at jurisdiction as an issue for equal protection and suggests that only a rational basis test needs to be considered. Clearly, under equal protection analysis, this bill would show a legitimate government interest of reducing recidivism and affecting public safety. The Legislature is able to attack big issues by learning from smaller projects.

CON: This bill failed to consider the cost of possibly having to defend to constitutionality of this bill. This bill appears to violate the 14th Amendment because two defendants in identical situations could have different outcomes based only on the geography in which they sit. There are a couple of cases, *State v. Short* and *State v. Bartholomew*, that seem to make that point. I am not opposed to the idea of supervision and in fact, my clients fully endorsed the idea of the justice reinvestment project. That recommendation reduced incarceration and added supervision without creating a net difference.

Persons Testifying (Ways & Means): PRO: Craig Meidl, Police Chief, City of Spokane; Tony Hazel, Senior Deputy Prosecutor, Spokane County Prosecuting Attorney's Office; Amber Waldref, Councilmember, City of Spokane.

CON: Bob Cooper, Washington Defender Association & Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.