

HOUSE BILL REPORT

SSB 5492

As Passed House:
April 16, 2019

Title: An act relating to sentencing of motor vehicle-related felonies.

Brief Description: Sentencing of motor vehicle-related felonies.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Billig, Padden, Pedersen, Holy and Dhingra).

Brief History:

Committee Activity:

Public Safety: 3/18/19, 3/28/19 [DPA];
Appropriations: 4/6/19, 4/8/19 [DPA(PS)].

Floor Activity:

Passed House: 4/16/19, 96-2.

Brief Summary of Substitute Bill

- Authorizes, until June 30, 2026, a court entering a sentence for certain motor vehicle felonies to impose six to 12 months of community custody when the midpoint of the standard sentence range is greater than one year.
- Provides that the sentence of incarceration for affected offenders may not exceed the midpoint of the standard sentence range reduced by one-half of the ordered term of community custody.
- Requires the Department of Corrections to supervise offenders sentenced to community custody for motor vehicle felonies, and, to the extent possible, make appropriate programming available during the term of community custody.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: Do pass as amended. Signed by 9 members: Representatives Goodman, Chair; Davis, Vice Chair; Klippert, Ranking Minority Member; Sutherland, Assistant Ranking Minority Member; Griffey, Lovick, Orwall, Pellicciotti and Pettigrew.

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.

Staff: Omeara Harrington (786-7136).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Public Safety. Signed by 31 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Cody, Dolan, Dye, Fitzgibbon, Hansen, Hoff, Hudgins, Jinkins, Macri, Mosbrucker, Pettigrew, Pollet, Ryu, Schmick, Senn, Springer, Stanford, Steele, Sullivan, Sutherland, Tarleton, Tharinger and Ybarra.

Minority Report: Do not pass. Signed by 1 member: Representative Kraft.

Staff: Jordan Clarke (786-7123).

Background:

Community Custody.

Community custody is a portion of an offender's sentence served in the community, subject to conditions imposed by the court and the Department of Corrections (DOC). When an offender is sentenced to a period of community custody, the DOC must assess the offender's risk of reoffending and may establish and modify the offender's conditions of community custody based on risk to community safety and conditions imposed by the court. If an offender violates the conditions of community custody, he or she may be subject to confinement or nonconfinement sanctions.

Community custody may only be ordered for persons convicted of certain offenses. Courts are required to order community custody in addition to the base sentence for offenders convicted of sex offenses, violent offenses, and certain other offenses specified in statute. In addition, offenders sentenced under a sentencing alternative program may be placed on community custody as part of the program. The DOC must supervise every offender sentenced to community custody whose risk assessment classifies the offender as being at high risk of reoffense, as well as certain other offenders identified in statute regardless of risk classification.

Motor Vehicle Offenses.

A number of criminal offenses address the unauthorized taking or use of motor vehicles.

A person who commits Theft of a Motor Vehicle is guilty of a class B felony. Possession of a Stolen Vehicle is also a class B felony.

Taking a Motor Vehicle Without Permission in the first degree is a class B felony that is committed when a person, without the permission of the owner or person entitled to possession, intentionally takes or drives away an automobile or motor vehicle that is the property of another, and he or she:

- alters the motor vehicle for the purpose of changing its appearance or primary identification, including obscuring, removing, or changing the manufacturer's serial number or the vehicle identification number plates;
- removes, or participates in the removal of, parts from the motor vehicle with the intent to sell the parts;
- exports, or attempts to export, the motor vehicle across state lines or out of the United States for profit;
- intends to sell the motor vehicle; or
- is engaged in a conspiracy and: (1) the central object of the conspiratorial agreement is the theft of motor vehicles for sale to others for profit; or (2) has solicited a juvenile to participate in the theft of a motor vehicle.

Taking a Motor Vehicle Without Permission in the second degree is a class C felony committed when a person, without the permission of the owner or person entitled to possession, intentionally takes or drives away any automobile or motor vehicle that is the property of another, or he or she voluntarily rides in or upon the automobile or motor vehicle with knowledge of the fact that the automobile or motor vehicle was unlawfully taken.

Felony Sentences.

Sentence length for felony offenses is determined by reference to a sentencing grid. The sentencing grid provides a standard range of months for the sentence, based on both the severity, or "seriousness level," of the offense and the convicted person's "offender score," which ranges from zero to nine or more points based on the offender's criminal history. Sentences of up to one year are served in local jails, and sentences in excess of one year are served in a DOC prison facility.

Persons committing Theft of a Motor Vehicle or Possession of a Stolen Vehicle with an offender score of four or higher serve their sentences within DOC facilities. Taking a Motor Vehicle Without Permission in the first degree carries a DOC sentence with an offender score of one; in the second degree, with an offender score of six.

Summary of Amended Bill:

A court may sentence an offender to community custody for a period of six to 12 months in addition to the term of incarceration if the person is being sentenced for attempted or completed Theft of a Motor Vehicle, attempted or completed Possession of a Stolen Motor Vehicle, or Taking a Motor Vehicle Without Permission in the first or second degree, and the midpoint of the standard sentence range is greater than one year. The offender's sentence of incarceration must not exceed the midpoint of the standard sentence range reduced by one-half of the ordered term of community custody. Offenders receiving community custody under these terms are not eligible for earned release time in excess of one-third the total sentence.

The DOC must supervise offenders sentenced to community custody for qualifying motor vehicle offenses. The DOC must also assess affected offenders and identify programming and services that would be appropriate to address each offender's needs. To the extent possible, the DOC must make programming identified by the assessment available while the offender is on community custody.

No later than November 1, 2025, the DOC must report to the Governor and the Legislature with an analysis of the effectiveness of supervision in reducing recidivism among offenders committing felonies relating to the theft or taking of a motor vehicle. The DOC must consult with the Washington State Institute for Public Policy in guiding its data-tracking efforts and preparing the report.

The authorization to impose community custody for persons sentenced for qualifying motor-vehicle related felonies expires June 30, 2026.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Public Safety):

(In support) Washington is currently the only state that does not require supervision for property crimes, though its property crime rate is among the highest in the country. Washington also has a high recidivism rate, often with a small number of offenders committing a large number of offenses. The top 25 vehicle offenders in Spokane have committed 1600 crimes, causing a huge financial impact. After the state discontinued supervision for many offenders 10 years ago, there has been an epidemic in offenses. Though there has been some progress with respect to auto theft, it has not been significant enough. Incarceration alone is insufficient.

This proposal gives the judge discretion as to whether to impose supervision. Community supervision provides structure, connection to services, and accountability to reentering persons. Much of this type of crime is related to behavioral health issues. The DOC uses a risk needs responsivity tool in its supervision model and has helped people reclaim their lives and reenter society. This bill will take pressure off of scarce prison bed space and simultaneously reduce the number of crime victims. Issues that arose with a similar bill last year have been addressed in the current proposal, including lowering costs by decreasing incarceration and mitigating constitutional issues by making the program apply on a statewide basis. This is structured as a pilot with an evaluation period. The Legislature may apply this model to other property crimes in the future.

(Opposed) None.

(Other) Supervision is a good approach, and there is desire to have this policy work. However, as written, the reduction in jail time is not sufficient to provide an incentive to take this option under a plea bargain. A one-to-two ratio would provide a better incentive.

A release plan is required prior to placement on supervision. The DOC investigates release plans to ensure the offender is not put at risk to violate or reoffend. A person placed on supervision goes from a structured environment to an abundance of supervision, with

conditions applied based on risk and needs. The DOC looks at the deficits that contribute to criminality, like a need for housing or substance use disorder treatment, and community corrections officers act as stewards in making referrals for services while providing accountability in the event of violation.

Staff Summary of Public Testimony (Appropriations):

(In support) Since the recession, there has been no supervision for individuals convicted of property crimes. Washington is unique in this sense. A consequence of this policy is that recidivism and property crimes have increased over the years. There is a pilot program currently with the courts, and this bill would expand the policy statewide. The fiscal note is lower than in previous versions because the program is time-limited unless there is proof that the policy is worthwhile. This bill would decrease incarceration and increase community supervision time, which decreases overall costs for the Department of Corrections, and will reduce both recidivism and crime rates.

(Opposed) None.

Persons Testifying (Public Safety): (In support) Senator Billig, prime sponsor; Senator Padden; David Condon and Breean Beggs, City of Spokane; and Craig Meidl, Spokane Police Department.

(Other) Neil Beaver, Washington Association of Criminal Defense Lawyers and Washington Public Defenders Association; and Mac Pevey, Department of Corrections

Persons Testifying (Appropriations): Luke Esser, Spokane City Council.

Persons Signed In To Testify But Not Testifying (Public Safety): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.