

SENATE BILL REPORT

SHB 1549

As Reported By Senate Committee On:
Law & Justice, March 30, 1995
Ways & Means, April 3, 1995

Title: An act relating to treatment-oriented sentences for offenders convicted of manufacture, delivery, or possession with intent to deliver a narcotic from Schedule I or II.

Brief Description: Creating a sentencing alternative for drug offenders.

Sponsors: House Committee on Corrections (originally sponsored by Representatives Ballasiotes, Morris, Wolfe, Campbell, Quall, Backlund, Dyer and Blanton; by request of Sentencing Guidelines Commission).

Brief History:

Committee Activity: Law & Justice: 3/23/95, 3/30/95 [DP].
Ways & Means: 4/3/95 [DP].

SENATE COMMITTEE ON LAW & JUSTICE

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

Signed by Senators Smith, Chair; Hargrove, Haugen, Johnson, Long, McCaslin, Roach and Schow.

Staff: Susan Carlson (786-7418)

Background: The Sentencing Guidelines Commission has proposed a special drug offender sentencing alternative for offenders convicted of manufacturing, delivering, or possessing with intent to manufacture or deliver a Schedule I or II narcotic drug. The commission suggests that judges should have an option to impose an alternative to the standard range sentence if it would be a benefit to the offender and the community, the offense involved a small quantity of drugs, the offender has no prior felonies, and no deadly weapon enhancement is involved.

Under the Sentencing Reform Act (SRA), an offender convicted of the crime of manufacturing, delivering, or possessing with intent to manufacture or deliver a Schedule I or II narcotic drug is not eligible for the first-time offender waiver and must be sentenced within the standard range. Two controlled substances commonly charged under this crime are cocaine and heroin. An offender convicted of the same crime that involves the controlled substance methamphetamine is eligible for the first-time offender waiver. The first-time offender waiver allows the judge to waive a sentence within the standard range, and instead impose confinement of 0-90 days, two years of community supervision, and other sentence conditions. The standard range for a first offense delivery or manufacture of methamphetamine, cocaine or heroin is 21 - 27 months.

Summary of Bill: A special drug offender sentencing alternative is established for offenders convicted of the crime of manufacture, delivery, or possession with intent to manufacture or deliver a Schedule I or II controlled substance that is a narcotic drug. An offender is eligible for this alternative if:

- (1) no deadly weapon enhancement was imposed;
- (2) the offender has no prior felony convictions;
- (3) the judge determines that the offense involved only a small quantity of drugs;
- (4) the judge determines the offender and the community will benefit from the sentencing alternative; and
- (5) the mid-point of the offender's standard range exceeds one year.

The judge has discretion to sentence an eligible offender under this sentencing alternative. If the judge chooses this alternative, the offender must be sentenced to total confinement in a state facility for a period equal to one-half of the mid-point of the offender's standard sentence range.

While in prison the offender must undergo a comprehensive substance abuse assessment and receive, within available resources, appropriate treatment services. The treatment services must be designed by the Department of Social and Health Services Division of Alcohol and Substance Abuse, in cooperation with the Department of Corrections.

If the mid-point of the offender's standard range is 24 months or less, no more than three months of the sentence may be served in work release.

Offenders must also be sentenced to serve one year of concurrent community custody and community supervision, which must include appropriate outpatient substance abuse treatment, crime-related prohibitions including a condition not to use illegal controlled substances, and a requirement to submit to testing for drug use. The court may require that the monitoring be conducted by the Department of Corrections, a treatment alternative to street crime program, or other comparable program. The offender may be required to pay \$30 per month to offset these monitoring costs. The judge must also impose three or more of the following conditions:

- (1) devote time to specific employment or training;
- (2) remain in a certain geographical area and report changes in address or employment;
- (3) report to a community corrections officer;
- (4) pay court-ordered legal financial obligations;
- (5) perform community service work;
- (6) stay away from locations designated by the judge.

The Department of Corrections, with notice to the prosecutor and sentencing court, may impose administrative sanctions on offenders who violate any of the sentence conditions. Upon motion of the court or the prosecutor, a violation hearing can be held by the court. If the court finds that the offender willfully violated the conditions, the court may impose confinement of up to the remaining one-half of the mid-point of the standard range.

The Sentencing Guidelines Commission is required to evaluate the impact of the drug offender sentencing alternative and submit a final report to the Legislature by December 1, 1997. The report must describe the changes in sentencing practices, the impact on prison population, the savings in state resources, the effectiveness of treatment services, and the impact on recidivism rates.

An offender convicted of the crime of manufacture, delivery, or possession with intent to deliver methamphetamine is not eligible for the first-time offender waiver.

Additional technical corrections are made.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: When sentencing eligible drug offenders, judges will have discretion to impose an alternative sentence that requires the offender to participate in treatment while in prison and to be subject to enhanced supervision on release.

Testimony Against: None.

Testified: PRO: Representative Ballasiotes, prime sponsor; Judge Ricardo Martinez, Sentencing Guidelines Commission; Dan Fessler, Sentencing Guidelines Commission; Dan Satterberg, King County Prosecutors Office; Barbara Miller, A Beginning Alliance, WA Work Release Contractor; Tom Armstrong, Lakeside Recovery Centers; Karen Klein, WA Assoc. of Criminal Defense Lawyers, WA Defender Assn.; Linda Grant, Assoc. of Alcoholism & Addictions Programs; Dave Savage, Dept. of Corrections; Ian McGowan, Pioneer Human Services.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Rinehart, Chair; Loveland, Vice Chair; Bauer, Cantu, Drew, Finkbeiner, Fraser, Gaspard, Hargrove, Hochstatter, Johnson, Long, McDonald, Pelz, Roach, Sheldon, Snyder, Spanel, Strannigan, Sutherland, West, Winsley and Wojahn.

Staff: Linda Brownell (786-7913)

Testimony For: Judges will have the option to send a small scale drug seller to prison where they will receive drug treatment, then on community supervision with follow-up drug

screening. It represents good law enforcement policy and gives us a real chance to reduce recidivism. This bill is supported by law enforcement agencies and treatment screening groups.

Testimony Against: None.

Testified: Dick Van Wagonnen, Sentencing Guidelines Commission; Melanie Stewart, Treatment Alternatives to Street Crime (pro); Dr. John Steiger, SGC.