

# SENATE BILL REPORT

## E2SSB 5419

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As Passed Senate, April 12, 2001

**Title:** An act relating to chemical dependency treatment for offenders.

**Brief Description:** Providing additional treatment for drug offenders.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Patterson, Long, Hargrove, Kline, Winsley and Kohl-Welles).

**Brief History:**

**Committee Activity:** Judiciary: 2/19/01, 2/27/01 [DPS].

Ways & Means: 4/10/01 [DP2S, DNP].

Passed Senate: 4/12/01, 31-14.

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** That Substitute Senate Bill No. 5419 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Constantine, Vice Chair; Costa, Hargrove, Long and McCaslin.

**Staff:** Aldo Melchiori (786-7439)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Second Substitute Senate Bill No. 5419 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Brown, Chair; Constantine, Vice Chair; Fairley, Vice Chair; Fraser, Kline, Kohl-Welles, Long, Rasmussen, Regala, B. Sheldon, Snyder, Spanel and Thibaudeau.

**Minority Report:** Do not pass.

Signed by Senators Roach and Zarelli.

**Staff:** Bryon Moore (786-7726)

**Background:** Prior to 1989, the manufacture, delivery or possession with intent to deliver heroin or cocaine was ranked at level VI on the sentencing grid (12 to 14 months incarceration for the first offense). In 1989, the ranking for the manufacture, delivery, or possession with intent to deliver heroin or cocaine (a class B felony) was increased to level VIII (21 to 27 months for a first offense).

The sentences of individual offenders are based on the seriousness of the current offense and their criminal history. Prior convictions typically count as one point— for the purposes of determining the length of the sentence for the current offense. In 1989, the Legislature

provided that if a present conviction is for a drug offense, three points would be counted for each prior adult felony drug offense and two points for each prior juvenile drug offense. For example, if an offender is currently being sentenced for possession of marijuana with intent to deliver and has one prior adult conviction for the same offense, the single prior conviction is scored as three points rather than one (providing a sentence of nine to twelve months of confinement instead of three to eight months).

**Summary of Bill:** Manufacture, delivery, or possession with intent to deliver heroin or cocaine is ranked at level VII on the sentencing grid (15 to 20 months for a first offense). Prior drug offenses, for other than the manufacture of methamphetamine, are scored as one point when determining the sentence for all subsequent drug offenses.

A criminal justice treatment account is created in the state treasury. Revenues to the criminal justice treatment account consist of savings resulting from the reduced drug sentencing and any other amount transferred or appropriated into the account. Funds in the account may be only spent, after appropriation, for substance abuse treatment for offenders filed upon by a prosecuting attorney in Washington and for drug courts.

The Department of Corrections (DOC), the Sentencing Guidelines Commission (SGC), and the Caseload Forecast Council must develop a methodology for calculating the projected biennial savings resulting from the reduced drug sentencing. Savings must be projected for the fiscal biennium beginning on July 1, 2003, and for each biennium thereafter. By December 1, 2001, the proposed methodology must be submitted to the Governor and the appropriate committees of the Legislature. The methodology is deemed approved unless the Legislature enacts legislation during the 2002 session to modify or reject it.

By December 1, 2002, and December 1 of each even-numbered year thereafter, DOC must use the approved methodology to calculate savings to the state general fund for the ensuing fiscal biennium resulting from reductions in drug offender sentencing. The department must report the dollar amount of savings to the State Treasurer, the Office of Financial Management and the fiscal committees of the Legislature. For the fiscal biennium beginning July 1, 2003, and each fiscal biennium thereafter, the State Treasurer is directed to transfer 75 percent of the savings amount reported by DOC from the general fund to the criminal justice treatment account, divided into eight equal quarterly payments. The remaining 25 percent of the savings amount reported is transferred to the violence reduction and drug enforcement account to be used exclusively for drug treatment for persons receiving reduced sentences. The transfers made pursuant to this act are made exempt from the Initiative 601 provision requiring a lowering of the expenditure limit.

In each odd-numbered year, the Legislature must appropriate the amount transferred to the criminal justice treatment account to the Division of Alcohol and Substance Abuse (DASA) who serves as the fiscal agent.

Seventy percent of amounts appropriated to the DASA from the criminal justice account must be distributed to counties pursuant to a distribution formula. The DASA, in consultation with DOC, the SGC, the Washington State Association of Counties, the Washington State Association of Drug Court Professionals, representatives of the criminal defense bar, and any other person deemed by the DASA to be necessary, must establish a fair and reasonable

methodology for distribution to counties of moneys in the criminal justice treatment account. County plans submitted for the expenditure of formula funds must be approved by the panel.

The remaining 30 percent of the amounts appropriated to the DASA from the account must be distributed as grants for the purpose of treating offenders against whom charges are filed by a county prosecuting attorney. The DASA must appoint a panel of representatives from the Washington Association of Prosecuting Attorneys, the Washington Association of Sheriffs and Police Chiefs, the Superior Court Judges Association, the Washington State Association of Counties, DOC, and the DASA. The panel must award the grants to eligible counties that have submitted plans and must approve expenditure plans for grant funds. The panel must attempt to ensure that treatment as funded by the grants is available to offenders statewide.

The county chemical dependency specialist, in consultation with the county prosecutor, county sheriff, and county superior court, must jointly submit a plan for disposition of all the funds provided from the criminal justice treatment account within that county. The funds must be used solely to provide approved alcohol and substance abuse treatment. Counties are encouraged to consider regional agreements for the efficient delivery of treatment. DSHS must annually audit the expenditures made by any county that receives funds. Any county found not to have used the funds appropriately must repay such amounts.

The Sentencing Guidelines Commission, as part of its comprehensive review of state sentencing policy, must look at issues related to drug offender sentencing, treatment and supervision requirements. The Institute for Public Policy must evaluate the effectiveness and financial impact of the act.

**Appropriation:** None.

**Fiscal Note:** Requested on February 12, 2001.

**Effective Date:** The bill contains an emergency clause and takes effect on July 1, 2001.

**Testimony For (Judiciary):** Incarceration without treatment of the cause does not stop drug use or stop related criminal activity. Treatment saves money and helps make communities safer. This is a measured change that will produce significant positive effects in communities. This is superior to what other states are trying because it does not replace incarceration, it supplements incarceration and couples it with an investment in crime reduction.

**Testimony Against (Judiciary):** The bill does nothing to address the economic and racial issues underlying drug abuse. The sentencing changes will not adequately fund the treatment. This is a last minute attempt to derail real change in drug sentencing.

**Testified (Judiciary):** PRO: Norm Maleng, King County Prosecuting Attorney; Russ Hauge, Kitsap County Prosecuting Attorney; Joe Lehman, Secretary, Department of Corrections; Dave Boerner, Sentencing Guidelines Commission; Ken Stark, DASA; Jane Peabody, Linda Grant, Pioneer Human Services; Jean Wessman, Washington Association of Counties; J. M. Black-Ferguson, WHEW; J. Selig, Michael Trichy, Washington Association of Drug Court Professionals; CON: Rudy McCoy, Jerry Sheehan, ACLU; Dr. Rob Killion, Fred Noland, King County Bar Association; Roger Goodman, Dan Merkle, Roger Lake,

WSNARC; Jon Ostlund, Washington Defenders Association, Washington Association of Criminal Defense Lawyers; Teresa Wharton, Association of Addiction Programs of Washington State (concerns).

**Testimony For (Ways & Means):** This bill is about reinvesting savings associated with reduced incarceration in drug treatment activities. Research has proven the effectiveness of treatment in reducing reoffense rates. The funding will allow the state and local governments to more effectively implement proven programs that will reduce crime and make communities safer.

**Testimony Against (Ways & Means):** The bill does not go far enough in reforming the state drug sentencing laws. The representation of the public defenders organizations between the various panels and advisory committees needs to be consistent. The funding provisions need to be strengthened to make sure that the savings go to treatment. Some of the savings need to be earmarked so that offenders receiving reduced sentences also receive treatment. The sentencing changes will allow drug dealers to receive reduced sentences, but it should address getting drug users into treatment. This bill is likely to fail because most offenders do not want to participate in treatment.

**Testified (Ways & Means):** NEUTRAL: Steve Aos, Institute for Public Policy; PRO: Senator Patterson, prime sponsor; Russ Hauge, Kitsap County Prosecuting Attorney; Eldon Vail, Deputy Secretary, Department of Corrections; Ken Stark, DASA; Dan Satterberg, King County Prosecutor's Office; CON: Sherry Appleton, Washington Defenders Association (concerns).