

HOUSE BILL REPORT

HB 1060

As Reported by House Committee On:

Public Safety

Appropriations Subcommittee on General Government

Title: An act relating to scoring an offense a class C felony equivalent if the offense was a felony under the relevant out-of-state statute when there is no clearly comparable offense under Washington law.

Brief Description: Scoring an offense a class C felony equivalent if the offense was a felony under the relevant out-of-state statute when there is no clearly comparable offense under Washington law.

Sponsors: Representative Goodman.

Brief History:

Committee Activity:

Public Safety: 1/24/13, 1/30/13 [DPS];

Appropriations Subcommittee on General Government: 2/20/13, 2/23/13 [DPS(PS)].

Brief Summary of Substitute Bill

- Establishes that, for the purpose of an offender score, an out-of-state felony conviction for which there is no clearly comparable offense under Washington law will be scored as a class C felony equivalent.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Holy, Hope, Moscoso, Pettigrew, Ross and Takko.

Minority Report: Do not pass. Signed by 2 members: Representatives Roberts, Vice Chair; Appleton.

Staff: Sarah Koster (786-7303).

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.

Background:

Under the Sentencing Reform Act, sentences for felony offenses are 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 is based on the offender's criminal history.

An offender score can vary from zero to nine-plus. There are various factors which affect the calculation of an offender's score: (1) the number of prior criminal convictions or juvenile dispositions; (2) the relationship between any prior offenses and the current offense; (3) any other current convictions; (4) the offender's community custody status at the time the crime was committed; and (5) the length of time between convictions.

Any adult felony criminal conviction counts as criminal history unless it constituted the "same criminal conduct" as a different conviction counted in the offender score or if it has "washed out" because of the length of time in the community with no new conviction. Class A felonies and felony sex offenses never wash out; class B felonies wash out after 10 consecutive years in the community without having been convicted of any crime; and class C felonies wash out after five years in the community without having been convicted of any crime.

Federal or out-of-state convictions are included in an offender's score the same as a comparable offense under Washington law would be. For federal offenses, if there is no clearly comparable offense under Washington law, the offense will be scored as a class C felony equivalent if it was a felony under the relevant federal statute.

Summary of Substitute Bill:

For out-of-state or federal felony convictions, if there is no clearly comparable offense under Washington law, the offense will be scored as a class C felony for the purpose of calculating an offender score, except that the offense will not be scored if the defendant can establish that his or her actual conduct did not constitute a felony under Washington law.

Substitute Bill Compared to Original Bill:

The substitute bill adds an exemption by which the defendant's prior out-of-state conviction will not be counted towards their offender score, if the defendant can establish that his or her actual conduct, underlying the out-of-state conviction would not have constituted a felony under Washington law.

Appropriation: None.**Fiscal Note:** Available.

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

Staff Summary of Public Testimony:

(In support) Under current law, most out-of-state offenses do not count in a defendant's offender score, because of how narrowly the courts have interpreted which offenses are "clearly comparable." This bill allows for those offenses to be counted. In 1995 the Legislature amended this statute to allow federal offenses which are not clearly comparable to be counted as a class C felony in a defendant's offender score. This applies the same language to out-of-state felony offenses. It may minimize the severity of some out-of-state offenses, but that is better than not counting them at all. The parties still have the opportunity to establish that an offense is clearly comparable and have it ranked higher or lower than a class C felony.

(Opposed) This bill could scoop up and score as felonies, offenses which are only misdemeanors or not criminal offenses in Washington. The language in this bill would not allow defense counsel to argue that an offense should not be counted. For example, marijuana possession is a felony in 10 states, but decriminalized here. This results in a disparate treatment of offenses that happen here versus offenses that happen out-of-state. Federal offenses are different from other states' offenses because individuals are subject to federal laws the same all across the country. This bill will also result in increased incarceration costs.

Persons Testifying: (In support) Representative Goodman, prime sponsor; and Charlie Blackman, Office of Snohomish County Prosecutor.

(Opposed) Ramona Brandes, Washington Defender Association and Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT

Majority Report: The substitute bill by Committee on Public Safety be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Hudgins, Chair; Parker, Ranking Minority Member; Buys, Chandler, Dunshee, Hunt, Pedersen, Springer and Taylor.

Staff: Alex MacBain (786-7288).

Summary of Recommendation of Committee On Appropriations Subcommittee on General Government Compared to Recommendation of Committee On Public Safety:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill provides more accountability for crimes committed and saves money at the local and state level. The bill was brought forward by the Washington Association of Prosecuting Attorneys to make sure that comparable crimes in other states count in the offender score. This bill will provide a workload reduction for local prosecutors and is either neutral or has a minor cost savings for the state. Under the bill prosecutors can still argue that an offense is comparable to a higher level offense and defense attorneys can argue that the offense is comparable to a gross misdemeanor. The default is set at a class C felony and that is the efficiency.

(Opposed) The concern of a majority of the Sentencing Guidelines Commission is that this bill is a shift away from original policy judgment of the Sentencing Reform Act in 1981. Washington determines whether a prior offense, even one committed out of state, is a felony and is comparable to Washington standards. This bill defers that determination to the judgment of the other states which frequently have different standards. One example would be a state that has made small amounts of marijuana a felony, whereas it would not be a felony here in Washington.

Persons Testifying: (In support) Tom McBride, Washington Association of Prosecuting Attorneys.

(Opposed) David Boerner, Sentencing Guidelines Commission.

Persons Signed In To Testify But Not Testifying: None.