

SENATE BILL REPORT

SB 6210

AS REPORTED BY COMMITTEE ON WAYS & MEANS, FEBRUARY 11, 1992

Brief Description: Providing sentencing alternatives for offenders.

SPONSORS: Senators Thorsness, Niemi, Nelson, Erwin, Newhouse and M. Kreidler

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 6210 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Nelson, Chairman; Thorsness, Vice Chairman; Erwin, M. Kreidler, and A. Smith.

Staff: Susan Carlson (786-7418); Dick Armstrong (786-7460)

Hearing Dates: January 21, 1992; February 7, 1992

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 6210 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Bailey, Bluechel, Hayner, M. Kreidler, Metcalf, Murray, Newhouse, Niemi, Rinehart, Saling, Talmadge, and Williams.

Staff: Cindi Holmstrom (786-7715)

Hearing Dates: February 10, 1992; February 11, 1992

BACKGROUND:

When the Sentencing Reform Act (SRA) was enacted in 1981, the intent was to emphasize confinement for violent offenders and alternatives to confinement for nonviolent offenders. During 1991, at the request of the Governor and the Legislature, the Sentencing Guidelines Commission conducted an assessment of the SRA to determine its effectiveness. The commission found that violent offenders have a higher rate of imprisonment and are serving longer sentences. However, existing statutory alternatives to confinement have been marginally effective in keeping nonviolent felons out of jail or prison.

Consideration of alternatives to total confinement may be desirable because the commission's review of sentencing trends found that during the last five years felony sentences have increased 64 percent. The majority of this growth was due to drug offender sentences which increased by 235 percent. In order to accommodate current sentencing policy, forecasts

indicate that the state prison system will need to add nearly 4,000 beds by 1997.

Based on the assessment of the effectiveness of the SRA and the review of sentencing trends, the commission is recommending that the Legislature consider two proposals for reducing the current reliance on confinement as the primary method of punishment upon conviction of a crime.

SUMMARY:

Drug Offender Treatment Option: Eligibility for this option is limited to those convicted of a drug offense other than offenses involving selling for profit, minors, protected zones, firearms, homicide or the manufacture of methamphetamine. In addition, the offender may not have any prior or current violent or sex offenses. The standard range for the crime must be more than 12 months but not more than 60 months.

If the offender is eligible, a pre-sentence investigation and a special evaluation of the defendant's use of illegal controlled substances must first be obtained. If the judge finds that the offender and the community will benefit from drug treatment, the court may select this option by imposing a sentence within the applicable standard range plus one year of community custody. If the sentence is not more than 36 months, the offender must serve at least six months in total confinement, with at least three months served in a Department of Corrections facility. If the sentence is more than 36 months, the offender must serve at least 12 months of total confinement, with at least six months served in a department facility.

The Department of Corrections determines whether the balance of the sentence will be served in total confinement, partial confinement, or community custody. The department must provide a drug treatment program to all persons sentenced under this option and is required to adopt rules governing the nature of the treatment, the decision of how the balance of the sentence shall be served, conditions to be imposed on offenders, and the procedures to be employed upon violations.

Nonviolent Offender Option: Eligibility for this option is limited to first time offenders, and felony offenders whose current conviction is not a violent or sex offense, who have no prior convictions for violent felony offenses, and whose standard range sentence is between 0-12 months.

If the court finds that the community and the offender would benefit from community-based punishment, the court may waive the imposition of a sentence within the standard range and impose a determinate sentence in the form of some combination of punishment units. Sentence alternatives available to a judge who chooses to impose this option include total confinement, partial confinement, treatment, training and rehabilitation programs, intensive supervision, and day supervision. Each of the possible alternatives is assigned a

specific number of punishment units. For example, one day of total confinement is equal to one punishment unit while one month of day supervision equals 15 units.

The sentencing grid is amended to specify the maximum number of punishment units assigned to those seriousness levels that may come within this option. In each case, the maximum number of punishment units the judge may impose is less than the maximum term of total confinement allowed by the standard range for that level.

Offenders sentenced under this option are on community custody status under the jurisdiction of the Department of Corrections. Sanctions for sentence violations are handled administratively by the department but cannot exceed the difference between the number of punishment units already completed by the offender and the number of units imposed by the court. Sanctions beyond the court-ordered punishment units must be imposed by the court and cannot exceed the standard range for the offense.

The bill is subject to a null and void clause if funding for the drug treatment option is not provided by June 30, 1992 in the supplemental Omnibus Appropriations Act.

EFFECT OF PROPOSED SUBSTITUTE:

Drug Offender Treatment Option: The drug offender option in the substitute bill is identical to the bill as introduced except that prior to imposing this option, the court is not required to order a pre-sentence investigation.

Nonviolent Offender Option: The punishment units concept is eliminated from the bill and a broader first time offender waiver approach is established.

Courts are mandated to utilize the waiver with first time offenders whose offense seriousness levels are I, II, or III. Confinement terms are limited to one-half of the standard range. The court is allowed the option to utilize the waiver with first time offenders whose offense seriousness levels are IV or above. Confinement is limited to one-half the standard range or 90 days whichever is less.

The court is allowed the option to utilize the waiver with offenders that: 1) have a single prior conviction for a first time offender offense; 2) have a standard range for the current offense of twelve months or less; and 3) the current offense is not a sex offense or a violent offense. Confinement is limited to one-half the standard range or 90 days, whichever is less.

Up to a maximum of one year of community supervision is allowed for persons sentenced under the first time offender waiver.

Other current first offender sentence requirements (i.e. reporting to corrections officer, maintaining employment, treatment, etc.) are restored.

The Department of Corrections is required to pay for outpatient drug treatment if the offender is indigent and funding is appropriated by the Legislature.

First time offenders must pay a \$10 penalty fee to the Department of Corrections.

If funding for drug treatment for offenders sentenced under either option is not provided, the act is null and void.

EFFECT OF PROPOSED SECOND SUBSTITUTE:

The intent of the null and void clause which makes the bill contingent upon funding is clarified.

Appropriation: none

Revenue: none

Fiscal Note: available

TESTIMONY FOR:

This bill is the result of a year-long study by the Sentencing Guidelines Commission. The bill provides an optional sentencing alternative for eligible drug offenders and non-violent offenders which would allow the imposition of sentence requirements that could lead to rehabilitation of the offender. This will allow the state to "punish smarter," as well as better utilize state resources.

TESTIMONY AGAINST:

The sanctions for violation of the drug laws were increased in 1990 and have resulted in positive advances in the war against drugs. This bill would be a step backward. The bill offers expensive state resources to drug dealers and substitutes treatment for punishment. Nonviolent offenders sentenced under this proposal would not receive any real sanctions if they fail to meet the sentence conditions.

TESTIFIED: PRO: Kit Bail, Sentencing Guidelines Commission; Judge Robert Lasnik, Sentencing Guidelines Commission; Mike Frost, Washington Association of Criminal Defense Lawyers; Michael Spearman, Washington Defenders Association; Judge Ric Martinez, Superior Court Judges Association; Larry Fehr, Washington Council on Crime and Delinquency; Dave Fallen, Sentencing Guidelines Commission; Chase Riveland, Department of Corrections; David Boerner, Ida Ballasiotes, Sentencing Guidelines Commission (neutral); CON: John Ladenburg, Washington Association of Prosecuting Attorneys; Mike Patrick, Washington State Council of Police Officers; Mike Redman, Washington Association of Prosecuting Attorneys