

SENATE BILL REPORT

SB 6239

As Reported By Senate Committee On:
Human Services & Corrections, February 1, 2006
Ways & Means, February 7, 2006

Title: An act relating to reducing crime.

Brief Description: Changing provisions relating to crimes.

Sponsors: Senators Hargrove, Johnson, Doumit, Oke, Stevens and Esser; by request of Attorney General.

Brief History:

Committee Activity: Human Services & Corrections: 1/16/06 1/16/06, 2/1/06 [DPS-WM].
Ways & Means: 2/6/06, 2/7/06 [DP2S].

Brief Summary of Bill

- Declares Legislative intent to provide funding for multijurisdictional task forces and establishes a pilot project for task forces in three rural areas of the state.
- Establishes a drug free workplace program. Qualifying employers will receive a discount on worker's compensation insurance premiums.
- Makes a variety of changes to local health department and department of health provisions related to methamphetamine cleanup.
- Modifies the drug offender sentencing alternative (DOSA) statutes and sentencing enhancements for ranked drug offenses.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 6239 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Brandland, Carrell, McAuliffe and Thibaudeau.

Staff: Indu Thomas (786-7536)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 6239 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Prentice, Chair; Doumit, Vice Chair, Operating Budget; Zarelli, Ranking Minority Member; Brandland, Fairley, Parlette, Pflug, Rasmussen, Regala, Roach, Rockefeller and Schoesler.

Staff: Paula Faas (786-7449)

Background: Methamphetamine (meth) is an addictive stimulant drug. A task force convened by the Attorney General in 2005, which included legislators, law enforcement officers, prosecutors, treatment providers, and other stakeholders, assessed the extent of the meth problem in Washington State.

The task force recommended changes to Washington laws in the areas of substance abuse reduction including: 1) drug-free workplace provisions, pilot programs and task forces; 2) cleanup of contaminated property; and 3) criminal penalties and procedures.

Drug Task Force Funding: Previously, two federal grant programs, the Byrne Formula Grant Program and the Local Law Enforcement Block Grant, provided federal funding for local drug task forces. These grants were administered by the Department of Community, Trade, and Economic Development (CTED). In Fiscal Year (FY) 2004, CTED allocated \$4.163 million in federal funding for local drug task forces. Since then, the federal government combined these two programs into the Justice Assistance Grant (JAG), also administered by CTED. The total amount of funding available was reduced by approximately 40 percent in FY 2006 and is projected to be reduced another 40 percent in FY 2007. The current estimate of federal funding for local drug task forces is \$2.343 million for FY 2007. Counties may receive JAG money either by applying for funding through CTED or applying directly to the Department of Justice. While most Washington counties have been part of a federally funded drug task force, 10 counties have not been included. They are Columbia, Island, Jefferson, Kittitas, Klickitat, Lincoln, Mason, Pacific, Pend Oreille, San Juan, Stevens, and Walla Walla.

Chemical Dependency Treatment at the Department of Corrections: The Department of Corrections (DOC) currently limits chemical dependency treatment for inmates to priority inmates. Inmates prioritized for treatment include those determined to be at high risk for violent reoffending and those sentenced under the Drug Offender Sentencing Alternative (DOSA). In fiscal year 2004, the DOC admitted 3,800 inmates to treatment while in prison, out of a total average daily prison population of 16,700.

Senate Bill 5763: Last year the Legislature passed SB 5763. One of the provisions in the legislation provided county governments the authority to impose a 1/10 of 1 percent sales tax dedicated to new and expanded therapeutic drug courts for dependency proceedings, and a new and expanded mental health and chemical dependency treatment services.

Drug-Free Workplace Provisions: In Washington all covered employers, except those self-insured, are required to satisfy their workers' compensation obligations by purchasing insurance from the Department of Labor and Industries (L&I). L&I has several premium discount programs, but does not have a program that gives premium discounts for employers who maintain drug-free workplaces.

In 1996, the Legislature enacted a substantially similar law, which established a premium discount for employers who mandated a drug-free workplace. The legislation terminated automatically in 2001. The 1996 law required L&I to report on the effect of the premium

discount provided in the bill on workplace safety. In the report, L&I concluded that the workers' compensation premium discounts had little measurable effect on workplace safety in most industries.

Cleanup of Contaminated Property: The chemicals which are used in the manufacture of meth can contaminate structural materials, furnishings, wastewater systems, and soils. Decontamination of the property is necessary to reduce the public health risks of injuries and hazardous exposures associated with those chemicals.

The State Board of Health and the Department of Health (DOH) establish standards, procedures, and responsibilities for regulating the occupancy and use of property where hazardous chemicals or chemical residues commonly associated with the manufacture of controlled substances are or may be present. DOH Clandestine Drug Lab Program ensures that contaminated sites are cleaned to public health standards. DOH also certifies contractors to decontaminate properties, and provides technical assistance and training to local health jurisdictions, government agencies, and community organizations.

Local health jurisdictions assess properties to determine the degree and extent of contamination due to chemical residues and other biohazards. The local health officers are also responsible for: 1) providing notice regarding the property to occupants and owners; 2) reporting contaminated property to DOH; 3) determining whether a contractor is required for decontamination; 4) verifying that decontamination has occurred; and 5) recording the decontamination with the county auditor.

The Washington State Model Toxics Control Act (MTCA): MTCA outlines the liabilities and responsibilities of the owner or operator of a site that has been contaminated by a hazardous substance or substances. The cleaning of these contaminated sites can be the responsibility of a broad range of individuals.

Drug Offender Sentencing Alternative (DOSA): Offenders convicted of drug offenses, for which the standard range sentence is over 12 months in prison, may be eligible for the drug offense sentencing alternative (DOSA). In addition to the prison-based DOSA sentencing alternative, the 2005 Legislature enacted a residential treatment DOSA. If the court elects to impose a prison-based DOSA sentence, the term of incarceration is one-half of the midpoint of the standard range during which the Department of Corrections is required to provide an assessment and appropriate drug treatment. The offender must serve the remainder of the midpoint of the standard range in community custody which must include outpatient drug treatment.

Summary of Second Substitute Bill: Substance Abuse Reduction: Counties who impose the tax authorized in SB5763 are eligible to seek up to \$100,000 from the Legislature for additional mental health or substance abuse treatment programs for persons addicted to methamphetamine, beginning in fiscal year 2008 and ending in fiscal year 2010. The bill declares legislative intent to provide funding to add 100 treatment beds to DOC facilities, to be available through fiscal year 2010. Three pilot projects are established to provide rural drug task forces to the three parts of the state. Each pilot project will receive four additional deputy sheriffs, two deputy prosecutors, and one clerk. Legislative intent is declared to provide the pilot projects with \$1.6 million in funding, and to provide a minimum of \$4 million in funding for multijurisdictional task forces currently in operation. The definition of

"neglect" of vulnerable adults and children is amended to include exposure to meth or ingredients of meth when there is intent to manufacture meth. CTED will review funding sources for local meth action teams through the Washington State meth initiative and drug task forces to determine their adequacy and report its findings to the Legislature by November 2006. However, if funding is not provided for the CTED study, the section is null and void.

Drug-Free Workplace Provisions: A program is established for state-fund employers, excluding public employers, to implement certified drug-free workplace programs and receive a five percent discount on certain industrial insurance premiums for up to three years. Employers with programs in place two years prior to the effective date of this legislation may qualify for a 2 percent premium worker discount. To qualify for a premium discount, a drug-free workplace program must include a written policy statement, substance abuse testing protocol, an employee assistance program, employee and supervisor training and confidentiality requirements. L&I is allowed to charge fees to administer the program. The total amount in premium discounts cannot exceed \$5 million per year.

The Department of Social and Health Services will conduct an evaluation to determine the costs and benefits of the program, and L&I will evaluate the effect of the premium discount on workplace safety and the state fund. Preliminary findings must be reported to the Legislature on September 1, 2007 and 2008, with final reports on December 1, 2009.

Authority and Discretion of Local Health Officers: When they have probable cause, local health officers (LHOs) in consultation with law enforcement officers are granted the authority to seek a warrant to conduct inspections and seizures of property. LHOs are granted the authority to issue emergency, seventy-two-hour orders when they determine the order is necessary to protect the public health, safety, or the environment.

In addition to condemning or demolishing contaminated property, city or county officials may take additional actions such as prohibiting use, occupancy, or removal of property, or order its decontamination. These actions are appealable; however, restrictions on use, occupancy, or removal of property are enforceable while the appeal is pending. City and county personnel, and their cleanup contractors, must comply with the local health officer's orders.

It is a misdemeanor for anyone to enter property after an order declaring it to be unfit has been issued. Exceptions are provided for governmental officials performing their duties, occupants recovering uncontaminated property, and for others as authorized by a public health officer or superior court.

In addition to decontamination, the owners or authorized contractors are required to submit written work plans for demolition or disposal activities. Property owners are responsible for: 1) the costs of any property testing which may be required to demonstrate the presence or absence of hazardous chemicals; and 2) the costs of the property's decontamination, demolition, and disposal expenses, as well as costs incurred by the local health officer. Within 30 days of issuing an order of unfitness, the local health officer must establish a time period in which decontamination, demolition, and disposal will be completed and fines or legal actions may be taken upon failure to meet the deadline.

Modification to Certification Requirements for Cleanup Workers: The DOH authority to deny, suspend, revoke, or place restrictions on certificates is expanded to include: 1) failing to

perform decontamination, demolition, or disposal work using department certified decontamination personnel; 2) failing to perform work that meets the requirements of the local health officers; 3) failing to properly dispose of contaminated property; 4) failing to cooperate with the DOH or the local health officer; or 5) failing the evaluation and inspection of decontamination projects pursuant to section 208 of this act. Additionally certified workers' fraudulent acts or acts of misrepresentation are expanded to include: 1) applying for, or obtaining a certification, recertification, or reinstatement; 2) seeking approval of a work plan; and 3) documenting completion of work to the DOH or local health officer.

Department of Health Cleanup Evaluations: The DOH must modify its rules to include methods for the testing of porous and nonporous surfaces. The DOH must also adopt rules about independent third party sampling to verify satisfactory decontamination of property.

The DOH may annually evaluate a number of the property decontamination projects performed by licensed contractors to determine the adequacy of the decontamination work. If a project fails the evaluation and inspection, the contractor is subject to a civil penalty and license suspension and is prohibited from performing additional work until deficiencies have been corrected.

Department of Ecology: DOE, in consultation with local health jurisdictions and their corresponding city or county governments, will conduct a pilot program to demonstrate application of existing MTCA and other available resources to cleanup methamphetamine contaminated property for public purpose. DOE will report to the Legislature on the effects of the pilot program by January 1, 2007.

Sentencing Modifications: Sentence enhancements for ranked drug offenses are to be served consecutively. Drug Offender Sentence Alternative offenders will serve 12 months or up to the half point of a sentence, whichever is greater. When the court determines that chemical dependency contributed to the felony offense, the offender, not just drug offenders, must receive a chemical dependency screening report prior to sentencing.

Washington State Institute for Public Policy: WSIPP shall conduct two studies and report its findings to the Legislature by January 1, 2007. First, WSIPP will study neighboring states criminal sentencing provisions related to methamphetamine to determine if these provisions provide an incentive for traffickers and manufacturers to relocate to Washington. Second, the WSIPP will study DOSA's impact on recidivism rates for offenders participating in DOSA relative to offenders receiving community treatment or no treatment at all.

Second Substitute Bill Compared to Substitute Bill: The bill removes references to the Washington State Patrol administering funding to local jurisdiction for narcotics task forces. The DOE is no longer required to report to the Legislature on costs, benefits, and consequences of making an exception to MCTA. Instead, DOE will conduct a pilot program on methamphetamine clean-up.

Substitute Bill Compared to Original Bill: The substitute includes a number of technical corrections, including but not limited to separating the bill into four parts: 1) Substance Abuse Reduction, Sections 101 - 114; 2) Drug Free-Workplace, Sections 201 - 216; 3) Cleanup of Contaminated Property, Sections 301-310; and 4) Criminal Sanctions and Procedures, Sections 401 - 405.

Provisions are added for state match of funds for counties that have imposed the tax authorized by SB 5763 and to include 100 additional treatment beds to DOC facilities. The funding for three multi-county drug task forces is increased to 1.6 million from 1.1 million.

The drug-free workplace provisions are modified to expand the eligibility of employers for the premium discount, including technical language changes to allow the employers in the retrospective ratings program to be eligible for the drug free workplace program. The bill includes a provision that employers with programs in place for the last two years may qualify for a 2 percent premium worker discount.

The standard for LHO's inspections is required to be probable cause. Occupants recovering uncontaminated property are added to the list of exceptions for entering contaminated property. The bill adds a 30 day requirement for LHOs to establish a time line related to unfit property.

The bill eliminates the sections establishing the Methamphetamine Contamination Cleanup Account and DOH grants to landlords for cleanup of contaminated property. It eliminates language allowing for exclusions to MTCA and instead directs DOE to report to the Legislature on costs, benefits, and consequences of making an exception to MTCA.

The bill modifies DOSA sentencing provisions. It eliminates pre-sentence investigations for all people accused of felony crimes. It clarifies language related to the WSIPP study on DOSA.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on (date).

Committee/Commission/Task Force Created: Yes.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For (Human Services & Corrections): A multi-disciplinary task force, including representatives from the Legislature and law enforcement, met and proposed this comprehensive approach to reducing methamphetamine use and the criminal behavior that results from such use. This bill also addresses the significant impact that meth use has on productivity in the workplace and the clean-up of properties contaminated by meth labs.

This bill could be improved by adding a provision to increase the number of treatment beds available in correctional facilities. The drug-free workplace aspects of the bill are a meaningful and effective way of addressing the problem of meth. The bill could be improved if extended to civil drug courts and judicial costs are included in the computation of costs. In order to avoid the potential for evidentiary problems in these cases, the law should require a team approach between law enforcement and the local health officials. The inclusion of juvenile drug courts will have a fiscal impact. The bill could be improved by using consistent terminology and definitions.

Testimony Against (Human Services & Corrections): This bill focuses more funding on creating task forces and too little on treatment. Employer drug testing provisions appear to encourage discrimination. The change to the definition of physical abuse is too broad. The sentence enhancements and reduction of good time provisions create a situation which is a

disincentive to participation in DOSA. The Model Toxics Control Act has fair and even liability provisions which should not be modified.

Who Testified (Human Services & Corrections): PRO: Rob McKenna, Attorney General; Henry Govert, Drug Free Training and Consultation; Martha Harden Cesar, Superior Court Judges Association; Sophia Byrd McSherry, Association of Counties; John Didion, Pacific County Sheriff; Mike Whelan, Grays Harbor County Sheriff; and Steve Whybark, Mason County Sheriff; Sharon Case, Association of Alcoholism and Addiction Programs; Tom McBride, Washington Association of Prosecuting Attorneys; Mo McBroom, Washington Environmental Council.

CON: Jennifer Shaw, American Civil Liberties Union.

Testimony For (Ways & Means): This is a balanced bill that deals with treatment, clean-up, and enforcement related to methamphetamine production and usage. The JAG/ Bryne Grant has eroded over the years. When one county or task force targets meth production, the problem is pushed into rural areas of the state. This bill allows for a statewide strategy to combat the problems.

Testimony Against (Ways & Means): None

Who Testified (Ways & Means): PRO: Don Pierce, Washington Association of Sheriffs and Police Chiefs; Ken Irwin, Yakima County Sheriff; Chris Johnson, Office of the Attorney General.