

HOUSE BILL REPORT

SB 5539

As Reported by House Committee On: Public Safety

Title: An act relating to creating a pilot program for the supervision of motor vehicle-related felonies.

Brief Description: Creating a pilot program for the supervision of motor vehicle-related felonies.

Sponsors: Senators Billig, Padden, Pedersen and Baumgartner.

Brief History:

Committee Activity:

Public Safety: 2/19/18, 2/20/18, 2/22/18 [DPA].

Brief Summary of Bill (As Amended by Committee)

- Establishes a pilot program authorizing courts entering sentences for certain motor vehicle felonies to impose one year of community custody in addition to the underlying term of confinement.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: Do pass as amended. Signed by 11 members: Representatives Goodman, Chair; Pellicciotti, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Chapman, Griffey, Holy, Orwall, Pettigrew and Van Werven.

Staff: Omeara Harrington (786-7136).

Background:

Community Custody.

Community custody is the portion of an offender's sentence served in the community under the supervision of the Department of Corrections (DOC). The length of a community custody term for an offense is established in statute. While on community custody, offenders

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are subject to a variety of conditions imposed by the court and DOC. The DOC must assess the offender's risk to reoffend and may establish and modify the offender's conditions of community custody based on the offender's risk to community safety and conditions imposed by the court. If an offender violates the conditions of community custody, he or she may be subject to confinement or non-confinement sanctions.

Community custody may only be ordered for persons convicted of certain offenses. Courts are mandated to order community custody in addition to the base sentence for offenders convicted of sex offenses, serious violent offenses, violent offenses, and other certain offenses specified in statute. In addition, offenders sentenced under a sentencing alternative program may be placed on community custody as part of the program.

Motor Vehicle Offenses.

There are a number of criminal offenses addressing the unauthorized taking or use of motor vehicles.

A person who commits Theft of a Motor Vehicle is guilty of a class B felony. Possession of a Stolen Vehicle is also a class B felony.

Taking a Motor Vehicle Without Permission in the first degree is a class B felony that is committed when a person, without the permission of the owner or person entitled to possession, intentionally takes or drives away an automobile or motor vehicle that is the property of another, and he or she:

- alters the motor vehicle for the purpose of changing its appearance or primary identification, including obscuring, removing, or changing the manufacturer's serial number or the vehicle identification number plates;
- removes, or participates in the removal of, parts from the motor vehicle with the intent to sell the parts;
- exports, or attempts to export, the motor vehicle across state lines or out of the United States for profit;
- intends to sell the motor vehicle; or
- is engaged in a conspiracy and: (1) the central object of the conspiratorial agreement is the theft of motor vehicles for sale to others for profit; or (2) has solicited a juvenile to participate in the theft of a motor vehicle.

Taking a Motor Vehicle Without Permission in the second degree is a class C felony committed when a person, without the permission of the owner or person entitled to possession, intentionally takes or drives away any automobile or motor vehicle that is the property of another, or he or she voluntarily rides in or upon the automobile or motor vehicle with knowledge of the fact that the automobile or motor vehicle was unlawfully taken.

Felony Sentences.

Sentence length for felony offenses is 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 ranges from zero to nine plus points, based on the offender's criminal history. Sentences of less than one year are served in local jails, and sentences of one year or longer are served in a DOC prison facility.

Persons committing Theft of a Motor Vehicle or Possession of a Stolen Vehicle with an offender score of four or higher serve their sentences within the DOC facilities. Taking a Motor Vehicle without Permission in the first degree carries a DOC sentence with an offender score of one; in the second degree, with an offender score of six.

Summary of Amended Bill:

Subject to the availability appropriated funds, a pilot program is established for community supervision of certain offenders who have committed motor vehicle felonies. Until June 30, 2025, a court entering a prison sentence for a qualifying motor vehicle-related felony may impose a term of one year of community custody in addition to the underlying sentence of confinement. The DOC must supervise offenders sentenced to community custody under the pilot.

The offenses for which community custody may be imposed under the pilot program include any of the following offenses:

- Theft of a Motor Vehicle;
- Possession of a Stolen Vehicle;
- Taking a Motor Vehicle Without Permission in the first degree; or
- Taking a Motor Vehicle Without Permission in the second degree.

By November 1, 2024, the DOC must submit a report to the Governor and the appropriate committees of the Legislature analyzing the effectiveness of supervision in reducing recidivism among offenders committing felonies relating to the theft or taking of a motor vehicle. The DOC must consult with the Washington State Institute for Public Policy in guiding its data tracking efforts and preparing the report.

Amended Bill Compared to Original Bill:

The pilot applies on a statewide basis, rather than only in Spokane County. It is specified that the term of community custody ordered under the pilot follows the underlying term of confinement for the offense. Crimes against property with a prior motor vehicle conviction are removed from the offenses eligible for participation in the pilot. The June 30, 2021, limitation on entering a sentence under the pilot is removed, and the expiration date is extended to June 30, 2025. The reporting date is delayed from November 1, 2022, to November 1, 2024.

Appropriation: None.

Fiscal Note: Requested on February 16, 2018.

Effective Date of Amended 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) Motor vehicle felonies are a problem statewide and in Spokane in particular. Many of the offenses are committed by a small number of offenders who are responsible for a grossly disproportionate number of crimes. On average, one of these offenders has had 67 incidents. Spokane is second or third in the nation in terms of property crime rates. There are high economic costs to the community associated with motor vehicle theft. Some families, even in low crime areas, have been victimized by auto theft numerous times.

Currently, these offenders are not given the help and supervision that they need, which is not good for the community and not good for the offenders. Community supervision is one way to address this problem, providing structure and connection with community services. Washington is one of the only states that does not allow community custody for these crimes. This approach will work, but there is a desire to judge whether it is worth the cost before applying it statewide. There will be data collection under the pilot.

Though there is some opposition to this proposal based on uneven treatment and equal protection, Washington appellate court cases evaluating therapeutic courts have demonstrated that this is okay. For instance, in one county a person could be serving the maximum term of incarceration, and in another could be going through drug court instead. Based on the case law, the program proposed here would pass the rational basis test. The Legislature often has pilot programs in which treatment in one place is different than another for the purpose of gathering data.

(Opposed) There is an equal protection problem with this proposal, in that one group is being punished more harshly than another for the same offense. There is an additional issue with including persons who have had a qualifying motor vehicle offense conviction in the past, no matter how long ago. The fiscal note for this bill does not include litigation costs, but defendants under this program would appeal and others would go to trial to avoid being convicted of a qualifying offense. Rehabilitation is desirable, but not at the cost of longer punishment. Defendants need an approved release address coming out of prison, so poor defendants will be trapped in prison longer.

(Other) Community supervision has value, but this bill increases complexity for the DOC. Not all Spokane-sentenced offenders will remain in Spokane, making tracking difficult for the DOC. Years ago, the Legislature decided that the DOC would supervise only high-risk offenders, which is eroded by reintroducing supervision by offense. With consecutive and concurrent sentencing variances, this community custody may not begin until years later for some offenders who have multiple cause numbers. Additionally, this will cause further capacity issues with local jails.

Persons Testifying: (In support) Senator Billig, prime sponsor; Craig Meidl and Candace Mumm, City of Spokane; and Larry Haskell, Spokane County Prosecutor's Office.

(Opposed) Kari Reardon, Washington Defender Association and Washington Association of Criminal Defense Lawyers.

(Other) Mac Pevey, Department of Corrections.

Persons Signed In To Testify But Not Testifying: None.