

SENATE BILL REPORT

ESSB 5934

As Passed Senate, June 30, 2017

Title: An act relating to convicted persons.

Brief Description: Concerning convicted persons.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senator Padden).

Brief History:

Committee Activity: Law & Justice: 5/02/17 [DPS, DNP].

Floor Activity:

Third Special Session: Passed Senate: 6/30/17, 29-20.

Brief Summary of Engrossed Substitute Bill

- Increases criminal penalties for sexual offenses against children and habitual property offenders.
- Adjusts community custody caseload by: (1) authorizing earned time for community custody sentences; (2) making concurrent supervision the default when there are multiple supervision sentences for multiple offenses; and (3) instituting a pilot project for the supervision of offenders convicted of motor vehicle related offenses.
- Reduces prison caseload by removing the sunset date from the existing drug sentencing grid.
- Creates a program that provides state-issued identicards to certain offenders released from prison.
- Adds malicious mischief involving motor vehicle offenses to the list of motor vehicle crimes that are triple scored and increases the seriousness level for third and subsequent motor vehicle related offenses.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5934 be substituted therefor, and the substitute bill do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Angel and Wilson.

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.

Minority Report: Do not pass.

Signed by Senators Pedersen, Ranking Minority Member; Darneille and Frockt.

Staff: Shani Bauer (786-7468)

Background: Sentencing Reform Act (SRA). In 1981, the Legislature passed the SRA, which established determinate sentencing for felony offenders. The SRA eliminated indeterminate sentences and parole in Washington, with some exceptions. Instead, the SRA determines a specific sentence within the statutory maximum. Judges determine an offender's sentence within a sentence range provided in statute, which is calculated using the severity or seriousness level of the offense and the offender's criminal history score calculated using points based on the offender's past convictions. The standard sentence range for any offense that is not a drug offense is established by referring to the standard sentencing grid.

The Legislature and citizens, through the initiative process, have utilized various mechanisms for increasing sentences beyond the standard sentence range for offenses perceived as a greater threat to public safety. Those mechanisms include:

1. *Sentencing enhancements*. Enhancements typically add time to a sentence if the offender is found guilty of a particular act. This time is generally not eligible for good time credits.
2. *Additional scoring*. Repeat offenders may be subject to double or triple scoring of offenses that will increase the offender's criminal history score and result in a higher standard sentencing range on the sentencing grid.
3. *Increased seriousness level*. The Legislature may increase the seriousness level of a particular crime, resulting in a higher standard sentencing range on the sentencing grid.
4. *Consecutive/concurrent sentences*. The court may require a term of confinement or community custody to run consecutively instead of concurrently, lengthening the offender's term of confinement or supervision.

Sentencing for Drug Offenses. In 2003, the Legislature adopted a separate sentencing grid that applies to drug offenses. Drug offenses committed on or after July 1, 2003, are divided into three seriousness levels. Offenders sentenced for Seriousness Level 1 drug offenses have a current offense of one of the following:

- possession or forged prescription of a controlled substance, legend drug, or marijuana;
- manufacturing, delivering, or possession with intent to deliver marijuana; or
- using a building for drug purposes.

Prior to 2013, the court had the discretion to impose a sentence of between 6 to 18 months for offenders with a criminal history of three to five prior felony offenses. As a result, the court could sentence the offender to either jail or prison depending on the length of the sentence. The drug sentencing grid was modified in 2013 so that any offender who commits a Seriousness Level 1 drug offense, and has a criminal history score within the range of three to five, will serve their sentence in jail unless an exceptional sentence is imposed. That change is set to expire July 1, 2018.

Community Custody. Certain offenders sentenced to prison must also be sentenced to a term of community custody. Terms of community custody depend on the type of offense. Mandatory terms of community custody for certain offenses are as follows:

- a three-year term for a sex offense or serious violent offense;
- an 18-month term for a violent offense, rather than a serious violent offense;
- a one-year term for crimes against persons, unlawful possession of a firearm when the offender is a criminal street gang member, certain drug offenses, or failure to register as a sex offender; and
- a length of term as authorized by statute for a sentencing alternative.

The court may impose up to one year of community custody for offenders who will be sentenced to a term of confinement for one year or less and therefore will serve their term of confinement in jail. Those offenses include any of the above listed offenses and offenders sentenced to a sentencing alternative for a First Time Offender Waiver (FTOW). Statute dictates which offenders sentenced to a term of community custody the Department of Corrections (DOC) is required to supervise. DOC may not supervise any offender for which there is not express statutory authorization.

DOC is required to supervise all sex offenders, serious violent offenders, dangerous mentally ill offenders, offenders under the jurisdiction of the Indeterminate Sentence Review Board, offenders convicted of failure to register, certain domestic violence offenders, offenders serving a sentencing alternative, offenders under the Interstate Compact, and felony DUI offenders. For any other offender sentenced to a term of community custody, DOC is only required to supervise the offender if the offender is assessed at a high risk to reoffend.

Unless the offender qualifies for a FTOW, the statute does not authorize a term of community custody for any offender convicted of a property offense. Sixty percent of the offenders supervised by DOC serve their confinement time in jail and are not sentenced to the custody of DOC.

Summary of Engrossed Substitute Bill: Part I - Seriousness Level of Crimes. The seriousness level for residential burglary is increased from a seriousness level 4 to a seriousness level 5.

Part II - Community Custody: Concurrent. Terms of community custody run concurrently when an offender is serving consecutive terms of confinement on multiple sentences, unless a court specifically orders otherwise. The DOC must also recalculate end dates for community custody, supervision, and placement so that they run concurrently to previously imposed sentences and it applies to all offenders currently in confinement or under active supervision. The recalculations do not create any expectations that any term will end before July 1, 2017.

Part III - Community Custody: Motor Vehicle Offense Pilot. A two-year pilot program, requiring the DOC to supervise persons convicted of felonies relating to the theft or taking of a motor vehicle regardless of the risk level assessed by the Department, is established.

Part IV - Community Custody: Good Time. Individuals serving a community supervision sentence may earn positive time for complying with their supervision plan. Earned time is

calculated at 10 days of positive time for each 30 days in complete compliance, excluding during the first and last month.

Part V - Habitual Property Offenders. A special allegation may be brought for habitual property offenders when the offender has a criminal history score of nine points or higher in certain property crimes. Once a person is found beyond a reasonable doubt based on the evidence to be a habitual property offender, the allegation requires an addition 24 months in total confinement for a Class B felony and an additional 12 months for a Class C felony.

Part VI - Motor Vehicle Property Offenders. Malicious mischief in the first and second degree involving a motor vehicle are added to the list of motor vehicle offenses that are triple scored in calculating an offender's criminal history score.

The seriousness level is increased by one for the following seven vehicle property crime convictions, if the offender is being sentenced for a third or subsequent offense:

- taking a motor vehicle without permission 1;
- malicious mischief 1 - motor vehicle;
- possession of a stolen vehicle;
- theft of a motor vehicle;
- malicious mischief 2 - motor vehicle;
- taking a motor vehicle without permission 2; and
- vehicle prowl 1.

Part VII - Identicards for Persons Released from the Department of Corrections. The DOC, working in conjunction with the Department of Licensing (DOL), creates and implements a program to provide state-issued identicards. DOC must inquire as to a person's immigration status prior to the issuance of an identicard. DOL charges an \$18 fee for each identicard issued under the program.

Part VIII - Applicability and Expiration. The sunset date for the drug grid changes from the 2013-15 biennium is removed.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Original Bill (First Special Session 2017): *The committee recommended a different version of the bill than what was heard.* OTHER: We appreciate the changes that were made in the bill. We are testifying as other because of Part 1 increasing the seriousness level for certain sex crimes—all of those crimes have pretty lengthy sentences already and some are determinate plus. The proposal wouldn't have an impact for about six to ten years at which time it would have an increase of approximately 400 beds. There are other policies that would be a better use of 400 beds. There are already quite a few tools available for these offenders.

We have problems with sections 2 and 4. We understand that there is a need for savings to pay for other parts of the bill, but we want to make clear where those savings come from. It comes from a reduction in work force for community corrections officers in supervising offenders out in the community. We do not believe the proposals for earned time and concurrent community custody are the right way to go about this.

The identicard program offers a positive step in community safety by providing offenders leaving custody with identification. Identification is necessary to access housing and employment. Providing offenders leaving custody with an ID removes a significant barrier to successful reentry. DOC continues to be challenged by the continual changes to sentencing structure. This bill has some provisions that reduce complexity including concurrent supervision and the elimination of the sunset for the drug grid. However, we want to point out that the bill increases complexity by establishing positive achievement time and providing motor vehicle related offense supervision. DOC would ask for an additional 6 to 12 months to implement. DOC believes that supervision should be targeted to high risk offenders. Also, the report is due too early. Many offenders will not be out of prison yet. DOC generally uses a three-year return to prison after release as a review. Records and other staff will need to be trained to these changes to make sure audit and hand calculations are correct.

The city and county of Spokane are huge supporters of supervision for motor vehicle related offenses. If a statewide program for supervision of motor vehicle offenders cannot be funded, we would remind the committee that Spokane has laid the foundation to do this on a smaller, local basis.

SB 5294 has already been passed out of the committee with measures to address complexity in sentencing laws. The provisions of this bill are inconsistent with that goal. Under the habitual property offender provisions, the court is making the determination beyond a reasonable doubt as to whether the person is a habitual property offender. This needs to be a determination by the jury.

Persons Testifying: OTHER: Tom McBride, WA Association of Prosecuting Attorneys; Alex McBain, Department of Corrections; Devon Schrum, Department of Corrections; Larry Jefferson, Washington Defender Association and Washington Association of Criminal Defense Lawyers; Sean Raybell, Washington Federation of State Employees; Damon Brown, Washington Federation of State Employees; Matt Zuvich, Washington Federation of State Employees; Luke Esser, City of Spokane.

Persons Signed In To Testify But Not Testifying: No one.