

# HOUSE BILL REPORT

## HB 1885

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### As Reported by House Committee On:

Public Safety  
Appropriations

**Title:** An act relating to addressing and mitigating the impacts of property crimes in Washington state.

**Brief Description:** Addressing and mitigating the impacts of property crimes in Washington state.

**Sponsors:** Representatives Klippert, Hudgins, Chandler, Hunter, MacEwen, Goodman, Ormsby, Tarleton, Fitzgibbon, Kagi, Ryu, Reykdal, Stanford and Walkinshaw.

### Brief History:

#### Committee Activity:

Public Safety: 2/11/15, 2/20/15 [DPS];

Appropriations: 2/25/15, 2/27/15 [DP2S(w/o sub PS)].

#### Brief Summary of Second Substitute Bill

- Creates a new felony property offense sentencing grid with reduced standard ranges.
- Imposes 12 months of community custody for a felony property offense when the offender has an offender score of two or more.
- Requires the Sentencing Guidelines Commission (SGC) to: (1) review property crime rates, impacts on offenders sentenced under the property crime grid, recidivism rates, and new grant programs; and (2) report to the Legislature in odd-numbered years.
- Creates a law enforcement grant program administered by the Department of Commerce.
- Provides a sunset review and termination of the SGC's new duties and the sentencing provisions for property crimes.

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### HOUSE COMMITTEE ON PUBLIC SAFETY

*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.*

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Goodman, Chair; Orwall, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Griffey, Moscoso, Pettigrew and Wilson.

**Staff:** Cassie Jones (786-7303) and Yvonne Walker (786-7841).

**Background:**

Felony Sentencing.

The sentence imposed for a felony crime will depend on the severity, or seriousness level of the offense and the defendant's offender score. Felony crimes are separated into 16 different seriousness levels. The offender score may vary from zero to nine plus points depending on five factors: (1) the number of prior criminal convictions or juvenile dispositions; (2) the relationship between any prior offense and the current offense of conviction; (3) the presence of other current convictions; (4) the offender's community custody status at the time the crime was committed; and (5) the length of the offender's crime-free behavior between offenses.

The standard sentence range for any offense that is not a drug offense is established by referring to the standard sentencing grid. For each current offense, the intersection of the column defined by the offender score and the row defined by the offense seriousness level determines the standard sentence range. Below is the current sentencing grid for seriousness levels one through four.

Serious Level	Offender Score									
	0	1	2	3	4	5	6	7	8	9 or more
4	3-9 months	6-12 months	12+-14 months	13-17 months	15-20 months	22-29 months	33-43 months	43-57 months	53-70 months	63-84 months
3	1-3 months	3-8 months	4-12 months	9-12 months	12+-16 months	17-22 months	22-29 months	33-43 months	43-57 months	51-68 months
2	0-90 days	2-6 months	3-9 months	4-12 months	12+-14 months	14-18 months	17-22 months	22-29 months	33-43 months	43-57 months
1	0-60 days	0-90 days	2-5 months	2-6 months	3-8 months	4-12 months	12+-14 months	14-18 months	17-22 months	22-29 months

Offenders convicted of the following categories of offenses may also receive a term of community custody as part of their sentence:

- sex offenses;
- violent offenses;
- crimes against persons;
- certain drug-related offenses;
- felony violation of Failure to Register as a Sex Offender;
- serious violent offenses; and

- Unlawful Possession of a Firearm where the offender is a criminal street gang member/associate.

#### State Tort Liability.

The State of Washington waived its sovereign immunity in 1961; therefore, the state is liable for damages arising out its tortious conduct to the same extent as if it were a private person or corporation. The Washington State Supreme Court has held that the state has a duty to take reasonable precautions to protect against reasonably foreseeable dangers posed by offenders released from confinement and subject to community supervision by the Department of Corrections (DOC). Therefore, a plaintiff who has incurred damages as a result of the actions of a supervised offender may sue the DOC for its negligent supervision of the offender. When a plaintiff who was determined to have no share of the fault prevails on a claim of negligent supervision, the DOC is liable for 100 percent of the damages regardless of its degree of fault.

#### Sentencing Guidelines Commission.

The Sentencing Guidelines Commission (SGC) was created by the Legislature in 1981 as part of the Sentencing Reform Act. The SGC served as an independent body statutorily required to evaluate and monitor adult and juvenile sentencing policies and practices and make recommendations to the Governor and the Legislature, served as a clearinghouse and information center on adult and juvenile sentencing, and conducted ongoing research on sentencing and related issues.

The SGC consists of 20 voting members, 16 of whom are appointed by the Governor. The members include four superior court judges, two defense attorneys, two prosecutors, four citizens, the chief of a local law enforcement agency, one county elected official, one city elected official, and one administrator of juvenile court services. There are four ex-officio voting members: the Secretary of the DOC, the Director of the Office of Financial Management (OFM), the chair of the Indeterminate Sentence Review Board, and the Director for the Juvenile Rehabilitation Administration. Four legislators are appointed by the leadership of the House of Representatives and the Senate and serve as nonvoting members. The SGC was authorized to appoint research staff to accomplish the duties of the SGC and a full-time executive director whose salary was fixed by the Governor.

In 2011 (pursuant to Engrossed Substitute Senate Bill 5891) the SGC was reorganized and became an advisory agency, located within the OFM. The position of the executive director was eliminated. The Caseload Forecast Council (CFC) became: (1) the clearinghouse and information center for adult and juvenile sentencing; (2) responsible for annually producing a statistical summary of adult felony sentencing and juvenile dispositions; and (3) responsible for publishing and maintaining the adult felony sentencing manual. The DOC assumed full responsibility for administering the interstate compact for adult offender supervision in the state.

#### Victims of Crime.

*Assistance to Victims.* The Crime Victims' Compensation Program (CVCP), within the Department of Labor and Industries (L&I) provides benefits to innocent victims of criminal acts. Generally, persons injured by a criminal act in Washington, or their surviving spouses

and dependents, are eligible to receive benefits (burial costs, medical treatment, and lost wages) under the CVCP.

*Crime Victims Advocacy.* The Office of Crime Victims Advocacy within the Department of Commerce (COM) administers grant funds for community programs working with crime victims and assists communities in planning and implementing services for crime victims.

*Victim Notification.* The Victim Information and Notification System, also known as VINE, automatically notifies a registered victim when various changes occur such as when an offender transfers to another facility, is discharged, changes custody or supervision levels, escapes, becomes noncompliant in certain instances, or has an upcoming court date.

Sunset Review.

The Sunset Act requires the Joint Legislative Audit and Review Committee to conduct a sunset review of a program or agency and provide a report with recommendations regarding whether the program should be retained, modified, or allowed to terminate.

**Summary of Substitute Bill:**

Felony Sentencing.

Most felony property offenses with a seriousness level of four and below are removed from the current seriousness level classifications and assigned a new seriousness level. A new sentencing grid is created with new, reduced standard ranges for those reclassified felony property offenses. Offenders convicted of a property offense, who have an offender score of two or more will also receive 12 months of community custody as part of their sentence.

Serious Level	Offender Score									
	0	1	2	3	4	5	6	7	8	9 or more
4	15-180 days	30-240 days	30-300 days	12+-14 months	12+-16 months	14-18 months	16-24 months	24-30 months	30-36.5 months	36.5-42 months
3	10-90 days	15-180 days	20-180 days	30-240 days	30-300 days	12+-14 months	12+-16 months	14-18 months	16-24 months	24-30 months
2	5-90 days	10-120 days	15-180 days	20-180 days	30-240 days	30-300 days	12+-14 months	12+-16 months	14-18 months	16-20 months
1	5-60 days	5-90 days	10-120 days	20-180 days	30-240 days	30-300 days	30-300 days	12+-14 months	12+-16 months	14-18 months

The following felony property offenses were omitted from the newly created sentencing grid: Residential Burglary, Theft of Ammonia, and Theft of a Firearm. Therefore, sentencing for these offenses remains the same. Sentencing remains the same for all other felony offenses.

State Tort Liability.

The DOC is not liable for tortious actions of a supervised offender unless reckless disregard of a known and immediate risk by the DOC is proven. In any case, the DOC is liable only for its degree of fault.

#### Sentencing Guidelines Commission.

Two new members are added to the SGC: the Chief Justice of the Washington Supreme Court or the Chief Justice's designee, as an ex-officio member; and the Executive Director of the CFC or the executive director's designee, an ex-officio nonvoting member. The SGC, under the purview of the OFM, may hire staff to carry out its mission.

The SGC must work in conjunction with the CFC to review the following at least once per biennium:

- property crime rates;
- the impact on offender populations of sentencing under the newly created property crime grid;
- recidivism rates; and
- the new grant funding programs created in the act.

No later than January 1 of each odd-numbered year, the SGC must report the results of the review to the Legislature.

#### Grants.

*Law Enforcement Grant.* The COM must establish a law enforcement grant program. A total of \$4 million is appropriated for the 2016-17 biennium, for law enforcement property crime reduction grants. Local law enforcement agencies must submit proposals to the COM that address property crime. The COM must use an advisory committee to evaluate grant applications and monitor the effectiveness of the grant projects. Preference must be given to grant applicants that can demonstrate a commitment to regional, multi-jurisdictional strategies, and that can clearly outline a comprehensive plan for municipalities to work with law enforcement, community-based organizations, and government agencies to address property crime.

*Pretrial Grant.* The Administrative Office of the Courts (AOC) must establish a pretrial grant program. A total of \$1 million is appropriated for the 2016-17 biennium for county pretrial improvement grants. The AOC must identify at least one county to receive a grant that will test the impact of providing defendants with earlier access to pretrial defense counsel on pretrial outcomes and county budgets.

Each of the grants listed above are one-time grants but may be renewed.

#### Victims of Crime.

*Assistance to Victims.* A total of \$800,000 is appropriated for the 2016-17 biennium for new victim compensation benefits for victims of property crimes. The L&I-CVCP must distribute emergency financial assistance to victims of property crimes. Benefits per victim is limited to \$1,000 per victim, per fiscal year.

*Victim Notification.* A total of \$200,000 is appropriated for the 2016-17 biennium for the victim notification programs in King, Pierce, and Snohomish counties, to be distributed by the COM.

Department of Corrections.

A total of \$9 million is appropriated for the fiscal biennium 2016-17 to the DOC to fund mandatory supervision of: (a) property offenders; (b) community violator bed impacts; and (c) chemical dependency, mental health and cognitive behavior treatment, and services.

Property Offense Supervision and Programs Account.

The Property Offense Supervision and Programs Account (Account) is created in the State Treasury. Money in the Account is to be used solely for community custody supervision of felony property offenders released from prison or jail, offender specific programming aimed at reducing reoffense, and property crime reduction grants.

Sunset Review.

A sunset review and termination of the SGC's new duties and the sentencing provisions for property crimes is scheduled for June 30, 2022.

The act is null and void unless funded in the budget.

**Substitute Bill Compared to Original Bill:**

The substitute bill:

- amends the Property Offense Sentencing Grid to:
  - increase the sentencing ranges in four cells;
  - include the median/midpoint of each range; and
  - include reference to community custody supervision in each applicable cell;
- increases Theft of a Motor Vehicle, Taking a Motor Vehicle without Permission, and Possession of a Stolen Vehicle to a seriousness level III;
- adds references to chemical dependency for purposes of providing such services to property offenders;
- provides that the DOC is not liable for tortious actions of a supervised offender unless reckless disregard of a known and immediate risk by the DOC is proven and provides that the DOC is only liable for its degree of fault;
- eliminates the newly created agency called the Washington Justice Commission (WJC) and reassigns its duties to the SGC. The SGC must work with the CFC and other agencies as needed to review and submit a report to the Legislature that reviews property crime rates and the effectiveness of the grant programs;
- requires the COM (instead of the WJC) to: (1) establish a law enforcement property crime reduction grant program; and (2) distribute grants for the victim notification programs;
- requires the AOC (instead of the WJC) to establish a pretrial grant program;
- requires the L&I-CVCP to distribute emergency financial assistance to victims of property crimes. Benefits per victim is limited to \$1,000 per victim, per fiscal year;
- creates a new dedicated Account in the State Treasury. Money in the Account is to be used solely for community custody supervision of felony offenders;

- requires that the new sentences in the bill apply to those sentences imposed on or after July 1, 2015, regardless of the date of the offense; and
- makes other technical corrections and clarifications.

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**Appropriation:** In each fiscal year (2016 and 2017) the following appropriations are provided: (1) a total of \$4 million for law enforcement property crime reduction grants; (2) a total of \$1 million for county pretrial improvement grants; (3) a total of \$800,000 for new victim compensation benefits for victims of property crimes; (4) a total of \$200,000 for the victim notification programs in King, Pierce, and Snohomish counties; and (5) a total of \$9 million to the DOC to fund the mandatory supervision of: (a) property offenders; (b) community violator bed impacts; and (c) chemical dependency, mental health and cognitive behavior treatment, and services.

**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. However, the bill is null and void unless funded in the budget.

**Staff Summary of Public Testimony:**

(In support) The Governor convened a task force to reinvest the money being spent on corrections in Washington. Washington is number one in the nation for property crime. The state needs to be tough on crime, but also smart on crime. This bill makes adjustments to the sentencing grid to reduce the standard ranges; but this is not soft on crime because it adds community custody time. Offenders will spend more time under the DOC with this bill. When offenders get out of jail/prison they would have some supervision. This will help stop the cycle of reoffense. The money will be reinvested in the police, victims' services, chemical dependency, and other services. This proposal is built on a national process that is about keeping communities safe and saving money. The approach in this bill is data driven and bi-partisan. The bill promotes two core values: public safety and effective use of taxpayer dollars. Many of the repeat offenders have drug dependency problems that have never been addressed. This bill tries to solve some of these problems through chemical dependency and mental health treatment.

The Council of State Governments was able to acquire a significant amount of data to drive the Governor's task force discussion. Unless current policies change, there will need to be additional prison capacity for the state. The volume of crime and arrests have not increased despite the growing population. Other states' property crime rates have dropped much more than Washington's. This bill builds capacity for the state to reduce recidivism. States with a lower property crime rate use probation sentences in lieu of confinement much more often than in Washington. This bill does not offer supervision in lieu of confinement, but in addition to confinement. Washington is the only state that does not supervise for property offenders when they come out of jail/prison. Property offenders have high rates of recidivism. Supervision is shown to reduce recidivism but it costs money. However, this bill

would not increase costs to the county jails and would save prison beds and delay the need for a new prison.

(With concerns) The academic logic of the bill makes sense. There are strong concerns about creating a justice commission. There was only a fleeting reference to this in the task force. Local agencies have trust issues with the state due to its track record on following through with promises regarding funding. The goal is to reduce crime and improve public safety. This bill is not quite ready.

(Opposed) There is support for a new approach to property crime. The best strategy is to focus on the reduction of recidivism early on in an offender's career. Most of the property offenders going into prison have already been to jail more than once. There are opportunities to try to reduce recidivism. There is support for supervision as a strategy to reduce recidivism. There is acceptance of some change to the sentencing grid to offset the cost of supervision. There is a concern about shifting costs to the county jails. There is a proposal for a more moderate shift in the grid which shifts fewer cells from prison to a county jail, but still give a significant reduction for prison beds. A dedicated fund should be created to track spending on supervision. This could be similar to the current criminal justice treatment account. There is concern that the drastic reduction in confinement time that is proposed in the bill would come at a significant cost to public safety. When sentences are reduced from prison to jail, the assumption should not be that offenders will be sentenced to the midpoint, but rather, the high end. This bill would have a significant fiscal implication for the counties. The cost issue prevents support for the underlying policy. There will be about a \$4 million a year impact to the counties.

**Persons Testifying:** (In support) Representative Klippert, prime sponsor; Representative Hudgins; Marshall Clement, Council of State Governments Justice Center; Bernie Warner, Department of Corrections; and Sandy Mullins, Office of the Governor.

(With concerns) James McMahan, Washington Association of Sheriffs and Police Chiefs.

(Opposed) Jon Turheim, Thurston County Prosecuting Attorney's Office; Dan Satterberg, King County Prosecuting Attorney's Office; and Brian Enslow, Washington Association of Counties.

**Persons Signed In To Testify But Not Testifying:** None.

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Public Safety. Signed by 18 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Parker, Assistant Ranking Minority Member; Carlyle, Cody, Dunshee, Hansen, Hudgins, S. Hunt, Jinkins, Kagi, Lytton, Pettigrew, Senn, Springer, Sullivan, Tharinger and Walkinshaw.

**Minority Report:** Do not pass. Signed by 13 members: Representatives Chandler, Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Condotta, Dent, Haler, G. Hunt, MacEwen, Magendanz, Schmick, Stokesbary, Taylor and Van Werven.



**Minority Report:** Without recommendation. Signed by 2 members: Representatives Fagan and Sawyer.

**Staff:** Rachelle Harris (786-7137).

**Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Public Safety:**

The second substitute bill changes the new property crime sentencing grid and the ranking of related crimes to match those of the original House Bill 1885 as introduced in the Public Safety committee. These changes include decreasing the sentencing ranges in four cells, eliminating the median/midpoint of each range, eliminating the reference to community custody supervision in each applicable cell, and eliminating the effective date in the bill that specifies that the new sentences in the bill apply to those sentences imposed on or after July 1, 2015, regardless of the date of the offense. The second substitute bill also restores Theft of a Motor Vehicle and Possession of a Stolen Vehicle to a seriousness level II and Taking a Motor Vehicle without Permission to a seriousness level, as seen in the original bill. The second substitute clarifies the transfer of duties of the Sentencing Guidelines Commission to be within the Caseload Forecast Council. It also removes the provision that aimed to change the standard of tort liability related to the supervision of offenders for the Department of Commerce (DOC). The second substitute eliminates all direct appropriations, and eliminates the creation of the dedicated account. It also removes the sections that created new grant programs, though it keeps the grant program housed within the DOC for law enforcement grants.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested February 24, 2015.

**Effective Date of Second Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

**Staff Summary of Public Testimony:**

(In support) Washington is rapidly approaching the need to build new prisons to accommodate the high rate of property offenders in this state. These offenders are not supervised, and they have no accountability upon release. Many of them reoffend as a result. This plan allows them to actually spend more time with the DOC, but less time behind bars, which is the more expensive part. This must be funded fully, however, otherwise it will not be worth it. The taskforce that came up with these recommendations has been working across the country and has had wide support. It's a data driven and evidence-based approach. Outcomes are important: Washington communities need to be safer! This policy does not just allow offenders out; this bill adds a new penalty: supervision. Washington is the only state in the country that does not supervise property offenders. There will be an estimated fewer 1,000 crimes with this policy. The liability provision attempts to fix the proportion of liability for which the DOC is financially responsible. The law enforcement grant money is really important; law enforcement is critical for crime deterrence efforts. Community

Corrections Officers (CCOs) support this bill, but only if fully funded. A workload study for the CCOs would be useful; there have been several sweeping changes made to the CCO workload, including Swift and Certain Sanctions and the Offender Management Network Information system change recently. Many property offenders have drug or mental health issues, and putting them on supervision with the associated treatment will be effective at reducing recidivism and making communities safer. Treating people who have illnesses will improve their lives as well as the lives of the people in the communities to which they belong.

(Opposed) None.

(Other) The actions of the Appropriations committee are really important, because this bill will cost money. The big savings is in avoiding the construction of a new prison, but you will have to spend some money to accomplish that. The dedicated account in this bill ought to be expanded to be even more controlling into future biennia. If the legislature does not fully fund this, it is a mistake to even be talking about it.

**Persons Testifying:** (In support) Representative Klippert, prime sponsor; Representative Hudgins; James McMahan, Washington Association of Sheriffs and Police Chiefs; Matt Zuvich, Washington Federation of State Employees; and Steven Aldrich, Friends Committee on Washington Public Policy.

(Other) Tom McBride, Washington Association of Prosecuting Attorneys.

**Persons Signed In To Testify But Not Testifying:** None.