

SENATE BILL REPORT

SSB 5035

As Passed Senate, February 25, 2021

Title: An act relating to offender scoring of drug offenses.

Brief Description: Concerning offender scoring of drug offenses.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Dhingra, Nguyen, Billig, Carlyle, Darneille, Das, Hasegawa, Kuderer, Lias, Lovelett, Mullet, Pedersen, Rolfes, Saldaña, Salomon, Stanford, Wellman and Wilson, C.).

Brief History:

Committee Activity: Law & Justice: 1/25/21, 1/28/21 [DPS, DNP].

Floor Activity: Passed Senate: 2/25/21, 27-19.

Brief Summary of First Substitute Bill

- Excludes certain class C felony drug crimes from counting towards an offender's criminal history score if it has been more than five years since the date of the conviction.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5035 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Darneille, Kuderer and Salomon.

Minority Report: Do not pass.

Signed by Senators Padden, Ranking Member; McCune, Assistant Ranking Member; Holy and Wagoner.

Staff: Shani Bauer (786-7468)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background: When a person is convicted of a ranked felony, the Sentencing Reform Act (SRA) applies and determines a specific sentence range within the statutory maximum. Sentences for felony offenses are determined by reference to a sentencing grid. The sentencing grid provides a standard range of months for the sentence, based on both the severity—seriousness level —of the offense, and the convicted person's offender score, which is based on the offender's criminal history. The offender score may vary from zero to nine plus points depending on certain factors. Some crimes will wash-out over time. That is, if the offender has spent a given amount of time in the community without committing another crime, the conviction will no longer count towards the offender's score. For example:

- class A and sex prior felony convictions always count towards the offender score;
- class B felony convictions other than sex offenses do not count toward the offender score if the offender has spent ten consecutive years in the community without conviction of another crime;
- class C felony convictions other than sex offenses do not count toward the offender score if the offender has spent five consecutive years in the community without conviction of another crime; and
- serious traffic convictions do not count toward the offender score if the offender has spent five years in the community without conviction of another crime.

Under the Uniform Controlled Substances Act (act), controlled substances are defined as a drug, substance, or immediate precursor included in schedules I through V as set forth in federal or state laws, or federal or state board of pharmacy rules. The schedule a substance is placed in depends on its potential for abuse, whether there is a currently accepted medical use in treatment, and the safety substances and risk for dependence, as determined by the Pharmacy Quality Assurance Commission. Substances in schedule I are the most tightly controlled, while those in schedule V are the least tightly controlled. It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by the act. It is also unlawful to manufacture or deliver a controlled substance except as authorized by the act. A violation of the prohibitions is generally punishable as a class C felony.

Summary of First Substitute Bill: A conviction, (1) under RCW 69.50.4013 for simple possession or solicitation, conspiracy, or attempt to possess a controlled substance; or (2) under RCW 9A.28.020 through 9A.28.040 for the crime of solicitation, conspiracy, or attempt to deliver a controlled substance may not be included in an offender's criminal history score if it has been more than five years since the date of entry of the judgment and sentence.

Appropriation: None.

Fiscal Note: Available.

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

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

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: In the last ten years we have recognized that substance abuse is a disorder and should be treated as such. The response has changed from one of punishment to that of treatment. This bill does not eliminate the conviction. Rather, those offenses that would be addressed with treatment do not count towards the person's criminal history after ten years.

OTHER: This bill should target those crimes relating to simple possession. This is 80 percent of all drug crimes. There are some crimes this bill applies to that we believe are unintended. For example, forged or counterfeit prescriptions, attempts, or homicide by possession. Also, as it relates to simple possession, there is a difference between a person who had a conviction 11 years ago and someone who has had a conviction for each of the last ten years.

It would be more direct and beneficial to reduce this to a five year wash out, similar to Class C felonies.

Persons Testifying: PRO: Senator Manka Dhingra, Prime Sponsor.

OTHER: James McMahan, Washington Association of Sheriffs and Police Chiefs; Russell Brown, Washington Association of Prosecuting Attorneys.

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