

# SENATE BILL REPORT

## ESSB 5891

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As Amended by House, May 24, 2011

**Title:** An act relating to criminal justice cost savings.

**Brief Description:** Addressing criminal justice cost savings.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senator Murray).

**Brief History:**

**Committee Activity:** Ways & Means: 4/28/11, 5/18/11 [DPS, DNP, w/oRec].

**First Special Session:** Passed Senate: 5/19/11, 29-17.

Passed House: 5/24/11, 50-43.

### Brief Summary of Engrossed Substitute Bill

- Eliminates the Department of Corrections (DOC) supervision of offenders from jail and court who have a low or moderate risk profile; DOC will continue to supervise offenders who are at a high risk to reoffend, offenders who have received an alternative sentence and who are therefore receiving treatment, and offenders with a history of domestic violence.
- Reduces the maximum term of supervision for offenders sentenced under a first time offender waiver from 24 months to 12 months.
- Eliminates "tolling" for offenders on community supervision; the length of supervision will run continuously regardless of whether an offender is incarcerated for a violation of the terms of the offender's community supervision.
- Allows DOC to charge a supervision intake fee, not to exceed \$600, rather than a monthly assessment.
- Transfers the Indeterminate Sentence Review Board to the DOC; transfers some functions of the Sentence Guidelines Commission (SGC) to the Caseload Forecast Council; the SGC body and the Sex Offender Policy Board continue as independent entities supported by the Office of Financial Management.

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### SENATE COMMITTEE ON WAYS & MEANS

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*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:** That Substitute Senate Bill No. 5891 be substituted therefor, and the substitute bill do pass.

Signed by Senators Murray, Chair; Zarelli, Ranking Minority Member; Brown, Fraser, Hatfield, Kastama, Keiser, Kohl-Welles, Pridemore, Regala, Rockefeller and Tom.

**Minority Report:** Do not pass.

Signed by Senator Pflug.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Kilmer, Vice Chair, Capital Budget Chair; Parlette, Ranking Minority Member Capital; Baxter, Conway, Hewitt, Honeyford and Schoesler.

**Staff:** Richard Ramsey (786-7412) and Shani Bauer (786-7468)

**Background:** Offender Release and Supervision. Inmates may shorten their sentence time, if they display good behavior, through a program called earned early release. Depending on the crime committed, date of conviction, and the offenders' risk classification, offenders may get from 10-33 percent time off their sentence.

Offenders who are convicted of a sex offense, a violent offense, a crime against persons, or a drug crime are eligible to be released to community custody in lieu of earned early release. The Department of Corrections (DOC) may deny transfer of the offender to community custody if the offender does not have an approved release plan. In the release plan, the offender must propose a residence location and living arrangements. If DOC finds that the proposed plan may violate the offender's conditions of sentence, place the offender at risk to reoffend, or compromise community safety, DOC will not approve the offender's release plan. In this case, the offender will remain incarcerated until a viable release plan is found or the offender reaches the end of his or her sentence. DOC may provide rental vouchers to an offender for a period up to three months, if rental assistance will enable the offender to have an approved release plan.

DOC is currently required to supervise felony offenders sentenced to community custody who are classified at a high risk to reoffend; all sex offenders; all dangerously mentally ill offenders; all offenders with an indeterminate sentence; all offenders sentenced to Drug Offender Sentencing Alternative, Special Sex Offender Sentencing Alternative, and first time offender waiver (FTOW); and all offenders required to be supervised under the Interstate Compact. DOC must also supervise misdemeanor offenders who have been sentenced to probation by a superior court and who have been convicted of a sex offense, including a failure to register; and those convicted of fourth degree assault or violation of a domestic violence court order and who have a prior conviction.

Approximately 60 percent of the offenders supervised by DOC are sentenced to confinement of one year or less and therefore do not serve time in prison.

Cost of Supervision. *Assessments for Supervision of Felony Offenders.* DOC may impose a monthly supervision assessment on a felony offender under supervision, which is considered payment toward providing supervision. The assessment is \$15 per month for routine parole and up to \$50 per month for intensive parole supervision. The assessment is imposed for the

duration of supervision and is deposited in the Cost of Supervision Fund. Expenditures from the Cost of Supervision Fund are made for supporting the collection of legal financial obligations.

DOC may exempt an offender from payment of all or part of the assessment if the offender has diligently attempted but has been unable to obtain employment; the offender is a student; the offender has an employment handicap; the offender's age prevents employment; the assessment would create an undue hardship because the offender is responsible for supporting dependents; or other extenuating circumstances exist.

*Assessments for Supervision of Misdemeanant Probationers.* When an offender convicted of a misdemeanor or gross misdemeanor is placed on probation and supervised by either DOC or a county probation department, DOC or the probation department may collect a monthly assessment up to \$100 per month from the offender. The assessment is imposed for the duration of probation.

*Application for Interstate Transfer.* DOC processes applications for transfer of offenders under the Interstate Compact for Adult Offender Supervision and may charge offenders a reasonable fee for processing the application.

First Time Offender Waiver (FTOW). An offender is eligible to receive a sentencing alternative of a FTOW if the person:

- has never been convicted of a felony or participated in a program of deferred prosecution for a felony; and
- is not currently convicted of:
  1. a violent offense or sex offense;
  2. manufacturing, delivery, or sale of certain controlled substances; or
  3. felony driving under the influence.

In sentencing a first-time offender, the court may waive imposition of the standard sentence and impose a sentence of up to 90 days confinement and community custody of up to one year, or up to 24 months if treatment is also ordered.

In 2010 the court sentenced 1469 offenders to an FTOW. Approximately 41 percent of the offenders received a sentence of confinement within the standard sentence range. Three hundred fifty-five were sentenced to a 12-month term of community custody and 1021 were sentenced to a 24-month term of community custody. DOC currently supervises 2550 first-time offenders.

Indeterminate Sentence Review Board (ISRB). Prior to 1984 sentences imposed for adult felonies in Washington were indeterminate. Courts had wide discretion over whether or not to impose a prison sentence and the length of any sentence. The Board of Prison Terms and Paroles then decided when or whether to release an offender within the statutory maximum sentence period. Indeterminate sentencing is still in effect for a small number of prison inmates who committed crimes before July 1, 1984. The Board of Prison Terms and Paroles was re-designated as ISRB which has continuing responsibility to set the release dates for those offenders.

In addition to pre-1984 offenders, ISRB also determines whether to release sex offenders who committed their crimes after September 1, 2001, and who were sentenced to a determinate plus sentence including a minimum and maximum term of incarceration. ISRB exists as an independent entity in current law, consisting of a chair and four other members, each of whom is appointed by the Governor.

Sentencing Guidelines Commission (SGC) and the Sex Offender Policy Board. The Legislature established SGC in 1981 and directed it to recommend a determinate sentencing system for adult felonies. The principal goal of the new sentencing guidelines system was to ensure that offenders who commit similar crimes and have similar criminal histories receive equivalent sentences. Sentences were to be determined by the seriousness of the offense and by the criminal record of the offender. SGC completed the original adult felony sentencing grid in 1982, which was subsequently enacted into law and applied to crimes committed after July 1, 1984. In 1996 the Legislature directed SGC to assume the functions of the Juvenile Disposition Standards Commission, serving similar functions with regard to juvenile sentencing.

SGC is organized as a separate entity with membership appointed by the Governor. The continuing duties of SGC include evaluating and monitoring adult and juvenile sentencing policies and practices and recommending modifications to the Governor and the Legislature and serving as a clearinghouse and information center on adult and juvenile sentencing.

In 2008 the Legislature created the Sex Offender Policy Board (SOPB) to promote a coordinated and integrated response to sex offender management. SOPB is organized as an independent entity, staffed and maintained by SGC. SOPB responds to requests from legislators and conducts case reviews of sex offense incidents that occur within the state.

**Summary of Engrossed Substitute Bill:** Offender Supervision. DOC supervision of jail and court offenders is eliminated except for those offenders:

- assessed at a high risk to reoffend;
- sentenced to an alternative sentence under a FTOW, drug offender sentencing alternative, special sex offender sentencing alternative, or parenting alternative and therefore receiving treatment; and
- with a history of committing domestic violence offenses.

In sentencing a first-time offender, the court may impose up to six months of community custody or up to 12 months of community custody if treatment is also ordered.

Tolling for offenders on community supervision is eliminated; the length of supervision will run continuously regardless of whether an offender is incarcerated. Tolling continues for sex offenders subject to community supervision.

Cost of Supervision. Intake Fee for Supervision of Offenders. Both felony and misdemeanor offenders under DOC supervision must pay a supervision intake fee, which is considered payment toward the cost of establishing supervision. The fee is imposed after the offender is determined to be eligible for supervision. For an offender whose crime was committed on or after October 1, 2011, the fee is \$400-\$600 and is assessed for each judgment and sentence imposed for which supervision is required. For an offender whose crime was committed

before October 1, 2011, the monthly supervision assessment is converted to a one-time fee. The fee is based on the monthly rate and the number of months of supervision left, but may not exceed \$600.

Application for Interstate Transfer. DOC may charge a reasonable fee set by rule for processing an offender's application for out-of-state transfer of supervision under the Interstate Compact for Adult Offender Supervision. The fee is deposited in the Cost of Supervision Fund.

ISRB. ISRB is created within DOC. DOC must provide administrative and staffing support to ISRB. DOC may employ a senior administrative officer and other personnel as necessary to assist ISRB in carrying out its duties. The property and employees of ISRB are transferred to DOC.

Sentencing Guidelines Commission and Related Duties. SGC is created as an advisory agency, located within the Office of Financial Management. The Caseload Forecast Council (CFC) will now serve as the clearinghouse and information center for adult and juvenile sentencing and must annually produce a statistical summary of adult felony sentencing and juvenile dispositions. The CFC must also publish and maintain the adult felony sentencing manual. CFC is not liable for errors or omissions in the manual or for sentences that may be inappropriately calculated as a result of a practitioner's or court's reliance on the manual.

DOC assumes full responsibility for administering the interstate compact for adult offender supervision in the state. SGC must establish and maintain the SOPB. The SOPB serves in an advisory capacity and may be convened at the request of the Governor or legislative committee of jurisdiction.

Miscellaneous. By January 1, 2012, DOC must implement the provisions of this act, including recalculating community custody terms and release dates for offenders in accordance with the provisions of this act. This act applies to persons convicted before, on, or after the effective date of this section.

**Appropriation:** None.

**Fiscal Note:** Requested on April 27, 2011.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed; except for Sections 1-9 and 42 which contain an emergency clause and take effect immediately.

**Staff Summary of Public Testimony:** PRO: The voucher program has been a success. Local community has participated in monitoring offenders. The 589 offenders that will benefit from the voucher enabled with the funding in the Senate budget.

CON: The Governor opposes the ERD provisions and the reduction in supervision of high non-violent risk offenders. We appreciate removing early release provisions. We appreciate that you're faced with incredibly difficult decisions. We have worked closely with the Senate

in making reductions at DOC – always ensuring that we put public safety first. In the last 3 years cut supervision by one-third and closed three prisons. Governor believes we've reached a tipping point and that we cannot cut further in caseloads without affecting public safety. Actually, the difficulty in finding acceptable cuts reflects a success story – Washington has not followed the national trend in incarceration, keeping the prison population low by investing in diversion and treatment programs. Washington is 42nd in the country in incarceration rate; this means we are incarcerating the right people. It also means we have very little leeway in who we can let out. DOC has worked hard to reduce those held beyond their ERD. This bill would remove the DOC's discretion to hold offenders who in the Department's professional judgment are not ready to release into the community. In making reductions in community supervision, we've committed to supervising high risk offenders. This is the first step in not supervising high risk offenders.

Since the recession began, we've said that if you need to release offenders from incarceration or supervision, please target those who pose the least risk to public safety. Up until now that is what you have done, but in this bill there are a couple of places that is not the case. Unlike the cuts in the past – there are provisions in this bill that will have an effect on public safety. One portion of the bill that we oppose is the ERD provisions. Two years ago the average daily population (ADP) attributable to holding offenders past their ERD was 545, it is now 308; this reflects the success of the investment in vouchers to obtain a suitable address for releasing offenders. The inmates that are left are the ones for which we cannot approve a release plan. Most are high risk sex offenders, some are mentally ill and some are outright defiant.

The following are examples:

- Inmate Smith is 47 years old, a high violent offender from King multiple assault convictions including against law enforcement and number of infractions in prison. He has said he intends to max out his sentence and has no intention of following through on community supervision expectations.
- Inmate Jones is a 38-year old high violent offender from Richland, in for armed robbery with infractions in prison and threatening staff. He has a long history of mental health problems and cannot find release location with mental health resources. He has no family and no connection to community; he will release homeless.
- Inmate Doe is from Whatcom County, a 33 year old high violent level 3 sex offender with a long history of sex offenses. He is currently incarcerated for child molestation 3 and has a history of indecent liberties back to 1997. He has felony convictions for assault and 2 rape of a child sex offenses as a juvenile. However, he does not meet the criteria for civil commitment.

If you look carefully at the population in prison past their ERD, the vast majority is a risk to public safety; they are not a population we should release. One-third are sex offenders, including many offenses against children and another third are in for assault.

If you eliminate supervision for high non-violent offenders the following offenders will no longer be supervised.

- Offender #1 is a 29 year old on supervision for 3rd degree assault in Pierce County. He threatened to kill everyone on a city bus and assaulted the driver.

- Offender #2 is from Benton County; he is a 32 year old, convicted of voyeurism, pled down from a charger of child molestation. He has 21 misdemeanors and two felonies.
- Offender #3 is a 21-year old from Clark County. Convicted of robbery 2 and assault; he broke into home, finding no money stole laptop.

If this bill passes these and thousands of others would not be subject to supervision. All the reductions DOC has taken have been based on the principle of protecting public safety. With this bill we are abandoning that principle. Oppose sections that reduce or eliminate supervision. The community supervision division has experienced many changes. SB 5288 created supervision of worst and before we understand the effects of 5288, we're back looking to cut more. We're very concerned about prison safety – as you close prisons and housing units and reduce staff, these dangerous policies will result in greater recidivism. Bring offenders back with inadequate staffing and not enough beds. Urge against release of high risk violent sex offenders – who still have time on their sentence. Oppose removing high risk offenders from supervision. Offenders past their ERD – that have poor performance in prison, they assault staff; they don't want to comply. Recall the movie "The Shawshank Redemption" which illustrated that time and pressure bring about change. An additional year can make a difference. We view this as our problem. Criminal justice is only going to be done by government. We're a success story – which makes your job tough. We don't have a large prison population with a lot of low risk offenders that would be easy to release. Thanks for not including early risk. If you want \$90 million out of DOC, that last \$12 million is going to be achieved by releasing high risk offenders from incarceration or supervision. Urge you to not do that.

OTHER: This is a bill that we need to be very cautious about. The more troubling parts of the bill, relating to early release, are now gone. Troubling parts remain relate to ERD. Having looked at the offenders held beyond their ERD, they are a scary bunch. High violent and high non-violent have great propensity for doing new crimes. This bill should go forward, but don't let the savings alone be the criteria for moving this bill. Spend the time to make this right. I am supportive of the voucher provisions. DOC found the voucher program quite successful in stabilizing offenders. We oppose moving the SGC functions to DOC. SGC has done an exceptional job, bringing objectivity and fairness to analysis of sentencing. DOC is not the right agency. We have trouble getting data out of DOC. In addition, there is the appearance of fairness – DOC is not neutral in the criminal justice process; rather they have been on the side of law enforcement, arguing for longer sentences. We are encouraged by investments in evidence-based programs.

**Persons Testifying:** PRO: Jim Tharp, Unity House.

CON: John Lane, Governor's Office; Eldon Vail, Department of Corrections; Donald Feist, WA Federation of State Employees; Tracey Thompson, Teamsters 117; John Christy, Teamsters 117, WA State Penitentiary; Tom McBride, WA Association of Prosecuting Attorneys.

OTHER: Brian Enslow, WA Association of Counties; Senator Carrell; Shankar Narayan, American Civil Liberties Union.

### **House Amendment(s):**

- Restores supervision of persons convicted of Sexual Misconduct with a Minor in the second degree, Custodial Sexual Misconduct in the second degree, Communication with a Minor for Immoral Purposes, and misdemeanor Failure to Register as a sex offender.
- Eliminates the one-year limit on supervision of these offenders, as well as offenders convicted of a repetitive domestic violence offense who have a qualifying prior offense.
- Restores supervision of felony sex offenders who receive a sentence of one year or less in jail if their risk assessment indicates they have a low or moderate risk to reoffend.