



STATE OF WASHINGTON
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May 8, 2009

TO: SGC
FROM: Jean Soliz-Conklin
RE: 2009 Legislative Report

Introduction

This memo includes the major criminal justice bills passed in the 2009 session. As of this writing, the Governor is expected to call the legislature back in to complete some work on bills necessary to implement the budget.

There may be some more criminal justice discussions too. On the list of potential special session bills are EHB 6183, an illegal alien offender deportation bill and SB 6160*, which adopts a revised sentencing grid that was discussed by the legislature in the 2007 session.*The SGC has reanalyzed the fiscal impact of SB 6160.

Summary

The SGC was successful in getting all of its request legislation passed in 2009, and several bills assigned tasks to the Commission.

Two major themes arose related to criminal justice in the 2009 legislative session.

1. Cutting costs was a major topic of discussion, of course, because of the state's drastically reduced revenue. The Sentencing Guidelines Commission (SGC) provides the prison and jail bed forecast components of fiscal notes, and was very busy on dozens of ideas to reduce sentences or provide for early release offenders. Most of these ideas did not pass, but the legislature did revamp community custody to achieve significant savings.

2. Community Custody proposals were also discussed in depth in the context of research related to reducing recidivism. Legislative discussions took place about the prospective (2010) sunset of legislation that requiring the Department of Corrections (DOC) to target supervision to higher risk offenders and allowing up to 50% earned early release ("good time"). While the legislature did not continue the 50% good time provision past its schedule 2010 sunset date, the concept of targeting supervision to the higher risk offenders was passed, with passage of SB 5288 amended by SSB 6162. A number of additional bills took steps towards an evidence-based system.

Community Custody Bills

HB 1361: An act relating to county supervised community options. Status: Signed by the Governor.

Allows defendants convicted of non-violent and non-sex offenses to receive one-for-one credit for time served or time spent participating in a county supervised community option both prior to and after sentencing, as if the time was spent in jail. These defendants may also earn early release time for participating in these programs.

ESSB 5288: An act related to offender risk assessments. Status: delivered to the Governor. Scheduled for signing May 6 at 1:30 p.m.

Background: When the Sentencing Reform Act was passed by the Legislature in 1984, it contained very limited provisions for the supervision of offenders. Over time, the Legislature added back supervision in varying lengths of time and for varying offenses.

In 1999 the Legislature passed the Offender Accountability Act (OAA), extending community custody to all sex offenses, all violent offenses, all crimes against persons, and all felony drug offenses. It also required the Department of Corrections (DOC) to utilize a validated risk assessment and supervise offenders according to their risk level. In 2003, the Legislature restricted the types of offenders that DOC could supervise and increased earned early release for certain offenders from one-third to 50 percent of their sentence. The supervision scheme has largely remained the same since the 2003 changes. Certain offenders are sentenced to community custody ranges as set by the Sentencing Guidelines Commission.

In 2009, ESSB 5288 (and SB 6162) made dramatic changes to the community custody System. Please see the attached memo from SGC Attorney Shannon Hinchcliffe.

SB 5190: making technical corrections to community custody provisions. Status: Signed by the Governor. Bill requested by the Sentencing Guidelines Commission

In 2008 the legislature passed a bill reorganizing the community supervision and custody statutes (adopting the generic name of “community custody”) at the request of the SGC. The new statutory scheme becomes effective in August, 2009, and this bill made some technical corrections.

SHB 1791: An act relating to clarifying certain community custody and drug offender sentencing alternative sentencing provisions. Status: Delivered to the Governor.

The bill clarifies how much time an offender on a prison-based DOSA sentence must actually serve under community custody. Courts are given the authority to order DOC to complete a risk assessment and/or chemical dependency screening report to assist in a decision about whether the offender should be sentenced to community or prison-based treatment.

A term of community custody is established for unranked felony offenses where the court has made a finding that an exceptional sentence over 12 months is justified.

SHB 1919: An act relating to drug court funding. Status: Delivered to the Governor. This legislation allows counties to use up to 10 percent of the Criminal Justice Treatment Account for administrative costs of operating drug courts up until 2013.

SB 5525: Concerning rental vouchers to allow release from state institutions. Status: Delivered to the Governor.

Offenders who, because they have earned early release, are ready to be transferred to community custody are required to have an approved release plan. If they do not have housing, they often remained incarcerated. This legislation provides rental vouchers for a period of up to three months if the voucher results in an approved release plan. This measure will save about \$4 million in the next biennium.

SHB 1201: An act relating to community integration assistance program. Status: Signed by the Governor.

If an offender has been designated high risk to be a danger to himself or others and assessed as likely to have a major mental illness, DOC must include a mental health advance directive to be executed by the offender. The “Dangerous mentally Ill Offender program” is renamed the “Offender Re-Entry Community Safety Program”.

Juvenile Justice Bills

ESSB 5746: Modifying sentencing provisions for juveniles adjudicated of certain crimes. Status: Delivered to the Governor.

The standard sentence ranges for juveniles are changed for:

- a) Taking a motor vehicle without permission (first degree)
- b) Theft of a motor vehicle or possession of stolen vehicle; and
- c) Taking a motor vehicle without permission (second degree)

Provisions requested by the Sentencing Guidelines Commission.

- Juveniles prosecuted in adult court who are later charged with a crime not automatically transferred to adult court will be tried in adult court unless the juvenile was convicted of a lesser crime for the initial crime or was convicted of a lesser charge.
- The requirement for a mandatory decline hearing is removed for 15 year olds, unless the prosecutor seeks to place the juvenile in adult court.
- Prosecutors and the respondent may agree to waive the application of exclusive adult jurisdiction with approval of the court.

SSB 5326: An act relating to notice to individuals convicted of a sex offense as a juvenile of their ability to terminate registration requirements. Status: Signed by the Governor. Bill requested by the Sentencing Guidelines Commission

Requires the Washington State Patrol to at least annually notify notice to registered sex (or kidnapping) offenders whose offenses were committed when they were juveniles, of their ability to seek relief from registration.

Miscellaneous Criminal Justice Bills

SB 6167: An act relating to crimes against property. Status: Delivered to the Governor.

For the first time since 1975, the legislature is adjusting the monetary threshold amounts differentiating the various degrees of property crimes. The SGC is to make recommendations for adjustments again in 2014 and every five years thereafter. An organized retail crime task force is created (and judges are invited).

E2SHB 1078: An act relating to exchange facilitators. Status: Signed by the Governor.

A Class B felony and a misdemeanor are created for persons operating as exchange facilitators who are found to engage in practices prohibited by the law.

HB 1281: An act relating to the rights of victims, survivors, and witnesses of crimes to be heard before the indeterminate sentence review board and clemency and pardons board. Status: Signed by the Governor.

Allows victims to testify before the release of an offender by either board.

EHB 1385: An act relating to sexual misconduct by school employees. Status: Signed by the Governor.

The crimes of “sexual misconduct with a minor” are expanded to include circumstances where a school employee has sexual contact with a minor between 16 and 21 years old.

EHB 2279: An act relating to the offense of assault of a child in the first degree by requiring the review of the sentencing of offenders and modifying the conditions of release. Status: Signed by the Governor.

The Sentencing Guidelines Commission is directed to review the crime of assault of a child in the first degree as it relates to the elements of the crime and sentencing. A new condition of community custody is added for offenders convicted of this crime, prohibiting them from engaging in activities that involve supervising children under age 13.

SB 5832: Allowing the prosecution of sex offenses against minor victims until the victim’s twenty-eighth birthday if the offense listed in RCW 9A.04.080(1)(b)(iii)A or (c). Status: Signed by the Governor. Bill requested by the Sentencing Guidelines Commission

The statutes of limitation for certain sex offenses (ones where the child’s age is an element of the crime) may now be prosecuted up until the victim’s twenty-eighth birthday.

SB 5147: An act relating to criminal libel. Status: Signed by the Governor.

Criminal libel statutes are repealed following a Court of Appeals finding that they are facially unconstitutional because they do not require actual malice and are overbroad. The case has been appealed to the Supreme Court.

SSB 5380: Addressing the statute of limitations for certain crimes. Status: Signed by the Governor.

This legislation adds a discovery rule extension to the six year statute of limitations for prosecution of money laundering and identity theft.

SSB 5718: Concerning the commitment of sexually violent predators. Status: Delivered to the Governor.

This comprehensive legislation was requested by the Attorney General and revises the sexually violent predator laws in several aspects, including clarifications of: where file a SVP petition may be filed and the relationship between the county prosecutor and the AGO; evidentiary provisions pre-commitment; conditions for less restrictive alternatives and DSM definitions.

DOC Budget Highlights

- \$55 million per year to contract with CD providers to provide treatment in DOC facilities, including corrections centers and community supervision facilities.
- \$35,000 for a statewide council on mentally ill offenders

CORRECTIONAL OPERATIONS

- \$11.8 million for re-entry programs in-prison and reception diagnostic center program
- DOC anticipates reducing its average daily population by 1580, through variety of measures, including home detention for violators, changes to the Crimes Against Persons statute, deportation of undocumented alien offenders, and use of housing vouchers for offenders ready to leave incarceration.

COMMUNITY SUPERVISION

- \$2 million for offender housing vouchers (SB 5525 Institutional Release)
- \$375,000 matching funds federal second chance act grant
- \$2.7 million (2010) and \$3.1 million (2011) evidence-based community programs and for community justice centers as part of the offender reentry initiative.

JRA Budget Highlights

- \$1.5 million is provided annually for alcohol and drug abuse treatment, to be awarded by the JRA administration through competitive grants to counties who submit a plan.
- \$3 million is provided annually for grants to county juvenile courts for evidence-based (named) programs identified by WSIPP.
- \$1.2 million is provided to expand named JRA programs identified by WSIPP.
- A juvenile block grant will be administered by JRA which consolidates (chemical dependency, SSODA, mental health and other categorical funds. The funds must be used for WSIPP-identified evidence-based programs, and disposition alternatives are a priority.
- A committee is established to propose how a block grant could be administrated in the future.