

HOUSE BILL REPORT

HB 2834

*As Reported By House Committee on:
Human Services
Appropriations*

Title: An act relating to criminal sentencing.

Brief Description: Providing sentencing alternatives for offenders.

Sponsor(s): Representatives Hargrove, Riley, Leonard, Dellwo, Appelwick and Basich.

Brief History:

Reported by House Committee on:
Human Services, February 6, 1992, DPS;
Appropriations, February 10, 1992, DPS(HS-A APP).

**HOUSE COMMITTEE ON
HUMAN SERVICES**

Majority Report: *The substitute bill be substituted therefor and the substitute bill do pass.* Signed by 10 members: Representatives Leonard, Chair; Riley, Vice Chair; Winsley, Ranking Minority Member; Tate, Assistant Ranking Minority Member; Anderson; Brekke; Hargrove; Hochstatter; R. King; and H. Myers.

Minority Report: *Without recommendation.* Signed by 1 member: Representative Beck.

Staff: Antonio Sanchez (786-7383).

Background:

PART I - Work Responsibility and recuperation of inmate wages.

The Department of Corrections, Division of Correctional Industries, is required to develop and implement work programs that provide jobs, work experience and training to inmates; and to reduce a portion of the financial burden of corrections. To achieve these goals, the Division of Correctional Industries operates five classes of work programs.

All inmates working in Class I through Class IV receive financial compensation for their work that ranges from \$30 per month for Class IV work programs to the prevailing wage for offenders employed in Class I jobs. Class V jobs are court-ordered community work that are performed for the benefit of the community, without financial compensation.

The secretary of the Department of Corrections is required to develop a formula to determine the extent to which the wages an inmate earns while working in prison will be deducted to partially cover the cost of incarceration and the costs associated with the development and implementation of Correctional Industries programs. Under the formula currently used by the department, only inmates working in Class I jobs are required to pay a portion of their wages back to the department for the cost of incarceration. These inmates pay 15 percent of their gross wages. The funds go to the general fund. In fiscal year 1991, Class I inmates paid a total of \$151,134 into the general fund. The total wages paid to inmates working in Class I through Class IV Correctional Industries jobs in 1991 was \$3,561,194.

A 1992 Department of Corrections study indicated that significant increases in offender employment in Class I and II Correctional Industries programs could be realized.

PART II - Transfer of sentencing authority from the Indeterminate Sentence Review Board to the Superior Courts and the addition of increased penalties for violent offenders in prison.

Offenders currently serving sentences for felony convictions in Washington State were sentenced under one of two diverse sentencing systems. The first is the indeterminate sentencing system established in 1935 and applicable to felonies committed before July 1, 1984. The second is the determinate sentencing system established under the Sentencing Reform Act of 1981 (SRA) and applicable to felonies committed on or after July 1, 1984. Offenders convicted of felonies committed before July 1, 1984 are referred to as "pre-SRA offenders" and offenders convicted of felonies committed on or after July 1, 1984 are considered SRA offenders.

Under the traditional indeterminate sentencing system, the sentencing court has broad discretion on whether or not to commit the offender to prison. When the court does prescribe imprisonment, it is required to impose the maximum period of imprisonment specified in the Criminal Code for the offender's crime. Generally, offenders sentenced to prison under the indeterminate sentencing system serve a minimum term of imprisonment set by the Indeterminate Sentence

Review Board (or by the superior court for pre-SRA offenders convicted after June, 1986) and are released on parole after serving that term, less credit for "good behavior" time while incarcerated. Offenders released on parole may be returned to prison if they violate the terms of their parole. Offenders under sentence of death or of mandatory life imprisonment without parole are "non-parolable."

Generally, the SRA prescribes a standard sentence range of confinement for each felony crime included in the Criminal Code, and unless the sentencing court imposes an "exceptional sentence," the court is required to impose a sentence within the range prescribed for an offender's crime. The court's authority to impose an exceptional sentence is limited and subject to appeal. An offender sentenced to imprisonment under the SRA is not eligible for parole and is released upon serving the prescribed term of confinement, less credit for good behavior while confined. The SRA requires post-release supervision for certain offenders, but offenders do not have their determinate terms of confinement extended if they violate the terms of their community supervision.

The Legislature has enacted laws which, to some extent, impose the SRA's determinate sentencing system on pre-SRA prisoners. The Indeterminate Sentence Review Board, when it makes minimum term or parole decisions for pre-SRA offenders, attempts to make decisions reasonably consistent with the sentence ranges, standards and purposes of the SRA. The board is also required to give "adequate written reasons" in cases where it makes an incarceration decision outside the SRA sentence range for an offender's crime. Somewhat similar provisions exist for those pre-SRA offenders convicted after June, 1986, and for whom the sentencing court imposes a minimum term.

In carrying out their sentencing responsibilities under this act, the sentencing courts will be governed by the *ex post facto* clause of the United States Constitution and the court decisions interpreting that clause. Under these decisions, it is not likely that the sentencing court can impose a sentence on a pre-SRA offender that is more severe than the sentence which could have been imposed at the time of commission of the offense. It may be questioned whether, in applying the SRA to a pre-SRA offender, the sentencing court can impose a term of confinement that exceeds the offender's existing minimum term or the term established under the law existing at the time of the offense.

Summary of Substitute Bill:

PART I - Work responsibility and recuperation of inmate wages.

The Corrections Industries program is mandated to achieve an incremental increase over an eight-year period (1992-2000) until it reaches a total of 50 percent employment of Class I and Class II inmates. The Department of Corrections is required to charge inmates no less than 50 percent of their total gross wages for the cost of incarceration, up to gross wages of \$6 per hour. The 50 percent will not be charged to inmates until their personal savings account reaches a \$250 minimum. However, all inmates working in correctional industries are required to deposit 50 percent of their gross wages in an inmate personal savings account until the account reaches a \$250 minimum.

PART II - Transfer of sentencing authority from the Indeterminate Sentence Review Board to the Superior Courts and the addition of increased penalties for violent offenders in prison.

Penalty section for violent offenders in prison who commit other violent offenses:

Offenders in prison because of a violent offense (murder, rape, assault, arson, kidnapping, robbery, or first degree burglary) can be sentenced to a mandatory minimum term of 15 years or their range under the SRA, whichever is greater if they commit a murder, first or second degree assault, rape, or robbery while in prison. The term imposed shall be consecutive to the term of the offenses that sent them to prison. The statutory maximums for crimes that have a maximum penalty of 10 years in prison (class B felonies such as assault in the second degree) will not apply to those offenses.

Transfer of Sentencing Authority from the Indeterminate Sentence Review Board to the Superior Courts.

The Indeterminate Sentence Review Board will cease to exist on January 1, 1993. On that date, the sentencing authority for pre-SRA offenders formerly under the board's jurisdiction is transferred to the Superior Court.

Before its expiration, the board must establish the SRA standard range for each pre-SRA offender who is under the board's jurisdiction and not on parole. If a range does not exist for the offender's crime, then the board is required to select that range that the board believes includes crimes most similar to the offender's crime. Similarly, the sentencing court is required to establish the sentence range

for each pre-SRA offender convicted after June, 1986, and for each pre-SRA offender convicted in the future.

The sentencing court is then required to impose a determinate term of confinement on each SRA offender for whom a range has been established by the board or by the court. In setting the term, the court is permitted to consider any information that the Indeterminate Sentence Review Board could have considered in setting a minimum term or making a parole decision. The court may impose an exceptional sentence and sentence outside the range, but must set forth its reasons for doing so in written findings of fact and conclusions of law. Also, the exceptional sentence will be subject to appeal.

The court is authorized to review and revise a determinate term of confinement that it has imposed on a pre-SRA offender, but, in doing so, must conform to the rules that are applicable to the setting of the original term. Finally, the court must impose on the offender a term of post-release supervision for up to two years if it finds that the offender should be subject to such supervision given the nature of the offense and the circumstances when such supervision is required under the SRA.

Each offender on parole on January 1, 1993, is released from parole and placed on post-release supervision for a period which is the shorter of two years or the remaining time left on the statutory maximum sentence for the offender's crime. The offender will be granted credit for time served on parole. Generally, each offender for whom the board has scheduled a parole release date after January 1, 1993, will be released from prison on the scheduled date. The sentencing court is required to impose on the offender a term of post-release supervision, not to exceed two years, if the court believes the offender should be subject to such supervision, given the nature of the offense and the circumstances when such supervision is required under the SRA.

The terms and administration of post-release supervision under this act will be the same as for offenders sentenced under the SRA.

The Supreme Court is requested to adopt rules to govern implementation of these new sentencing procedures.

Substitute Bill Compared to Original Bill:

PART I - Work responsibility and recuperation of inmate wages.

The target date for reaching 50 percent employment of inmates in Class I and Class II is extended to the year 2000. The ability of the Department of Corrections to recuperate 50 percent of an inmate's wages is capped at \$6.00 per hour and can only be drawn for that purpose when the inmate has saved a minimum of \$250 in a personal inmate savings account. All inmates are required to deposit 50 percent of their gross wages in a personal inmate savings account until each account reaches a minimum of \$250. All language pertaining to the Correctional Industries Board is restored to original statute.

PART II - Transfer of sentencing authority from the Indeterminate Sentence Review Board to the Superior Courts and the addition of increased penalties for violent offenders in prison.

The major differences between the two versions are as follows: While the original bill provides for a June 30, 1992, expiration date for the Indeterminate Sentence Review Board, the substitute provides for a June 30, 1992, expiration date. The original version provides for two different sentencing systems. For offenders within the board's supervision who have committed certain violent felonies, the superior court generally would apply the indeterminate sentencing system administered by the board. For other offenders, the court would set a determinate term of confinement. Under the substitute version, the superior courts would set determinate terms for all offenders under the board's supervision.

Fiscal Note: Not requested.

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

Testimony For: Work programs will reduce inmates' idleness and provide them with both values and experience that will benefit them when they are outside prison. It should serve as a means for reducing recidivism and reducing the cost of incarceration. The inmates and offenders that are on parole under the Indeterminate Sentencing Review Board (ISRB) system are treated significantly different from their offender peers. The pre-SRA offenders must face a different standard of conduct and, most important, different consequences. Often these parole offenders are sent back into the prison where they cost more money to the state and cannot be productive members of society.

Testimony Against: It may be difficult for the Department of Corrections to increase the Correctional Industries program to 50 percent without spending a significant amount

of money on new staff and on the space inside the correctional facilities.

Elimination of the ISRB could impact the judiciary system and result in increased costs. In addition, it raises public policy issues concerning the number and types of offenders it will impact. Practical concerns such as security, transportation, scheduling of offenders in the courts, as well as the impact on local jails must be considered.

Witnesses: Representative Hargrove, Prime Sponsor (support); Judge Richard Strophy, Superior Court Judges Association (oppose); Douglas Sayan, Citizen (support); Jean Wessman, Association of Counties (oppose); Ken Stark, Department of Social and Health Services (support concept, oppose fiscal impact); Mike Redman, Washington Association of Prosecuting Attorneys (support); and Melanie Steward, Treatment Alternatives for Street Criminals (support if funded).

**HOUSE COMMITTEE ON
APPROPRIATIONS**

Majority Report: *The substitute bill by Committee on Human Services be substituted therefor and the substitute bill as amended by Committee on Appropriations do pass.* Signed by 25 members: Representatives Locke, Chair; Inslee, Vice Chair; Spanel, Vice Chair; Silver, Ranking Minority Member; Morton, Assistant Ranking Minority Member; Appelwick; Belcher; Bowman; Braddock; Brekke; Carlson; Dorn; Ferguson; Fuhrman; Hine; Lisk; May; Mielke; Nealey; Pruitt; Rust; D. Sommers; H. Sommers; Valle; and Wang.

Staff: John Woolley (786-7154).

Summary of Recommendation of Committee on Appropriations Compared to Recommendation of Committee on Human Services: References to eliminating the Indeterminate Sentence Review Board (ISRB) are removed so that there will be no change to the ISRB's current operating procedures. The date and percentages of employment of inmates are changed as follows: 25 percent by 1996 and 50 percent by 1998. In addition, the director must determine the appropriate amount of wages an inmate is to contribute to the cost of their incarceration. The secretary is to report to the Legislature by January 1993 on any hindrances to meeting these requirements.

Fiscal Note: Requested February 6, 1992.

Effective Date of Substitute Bill as Amended: Ninety days after adjournment of session in which bill is passed.

Testimony For: Work programs will reduce inmates' idleness and provide them with both values and experience that will benefit them when they are outside prison. It should serve as a means for reducing recidivism and reducing the cost of incarceration. The inmates and offenders that are on parole under the Indeterminate Sentencing Review Board (ISRB) system are treated significantly different from their offender peers. The pre-Sentencing Reform Act offenders must face a different standard of conduct and, most importantly, different consequences. Often these parole offenders are sent back into the prison where they cost more money to the state and cannot be productive members of society.

Testimony Against: It may be difficult for the Department of Corrections to increase the Correctional Industries Program to 50 percent without spending a significant amount of money on new staff and on the space inside the correctional facilities.

Elimination of the ISRB could impact the judiciary system and result in increased costs. In addition, it raises public policy issues concerning the number and types of offenders it will affect. Practical concerns such as security, transportation, scheduling of offenders in the courts, as well as the impact on local jails must be considered.

Witnesses: Representative Doug Sayan; Representative Hargrove (prime sponsor); Judge Paul Hansen, Superior Court Snohomish County; Kit Bail, Indeterminate Sentence Review Board; and Chase Reeveland, Department of Corrections.