

# HOUSE BILL ANALYSIS

## SSB 5006

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**Title:** An act relating to enhanced sentencing and supervision of sex offenders.

**Brief Description:** Enhancing sentences and supervision of sex offenders.

**Sponsors:** Senators Long, Hargrove, McCaslin, Haugen, Sheldon, Winsley, Goings, Deccio, McAuliffe, Franklin, Rasmussen, Hale, Johnson and Oke.

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### HOUSE COMMITTEE ON CRIMINAL JUSTICE AND CORRECTIONS

**Staff:** Pat Shelledy (786-7149)

**Background:** Before 1984, adult felons were sentenced under an indeterminate sentencing model. Under that model, the court sentenced the offender to the maximum term of confinement allowed under law for the felony classification. There are three felony classifications: A- which carries a maximum penalty of life in prison; B- which carries a maximum penalty of 10 years in prison; and C- which carries a maximum penalty of five years in prison. In addition to being sentenced to a maximum term, the offender was required to serve a minimum term in confinement. The Board of Prison Terms and Paroles, now called the Indeterminate Sentence Review Board (ISRB), set the minimum term until that authority was transferred to the sentencing courts. When the offender's minimum term expired, minus any good time credits awarded, the offender could be released on parole if the board found that the offender was *rehabilitated and a fit subject for release*. If the offender violated conditions of parole, the offender's parole could be revoked and the offender could be returned to prison. If so, a new parole eligibility review date would be set.

The Indeterminate Sentence Review Board is due to expire on June 30, 1998. However, a number of offenders remain under the board's jurisdiction.

The ISRB has broad powers to tailor sentences and conditions of release based on the individual defendant.

Once an offender has been paroled, the offender acquires a liberty interest that may not be denied absent procedural due process protections. Those protections have been established in United States Supreme Court Cases. In a recent case, the Supreme Court held that those procedural protections must apply if the release program closely resembles parole even if it is not called parole. The Court has stated that the essence of parole is release from prison, before the completion of a sentence, on the condition that the prisoner abide by certain rules during the balance of the sentence.

In 1981, the Legislature passed the Sentencing Reform Act (SRA) which replaced the indeterminate

system with a determinate system. The philosophy and structure of the two systems are different. Under the SRA, the court sets the term of confinement within statutorily prescribed ranges or outside those ranges under certain circumstances. The SRA originally abandoned post-release supervision as a viable goal of the penal system except that it continued to provide for some supervision of sex offenders in limited circumstances. Since enacted, the Legislature has amended the SRA several times to extend the period of post-release supervision over sex offenders. Under current law, when a court sentences a sex offender to prison, the court must sentence the offender to a period supervision called community custody for three years or up to the period of earned early release, whichever is longer. In addition, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any of the conditions imposed under the law up to the statutory maximum regardless of the expiration of the offender's term of community custody.

Sex offenders are required to register upon release. The length of time that they must be registered varies depending on the seriousness of the underlying offense.

**Summary:** A modified indeterminate sentencing system is adopted for sex offenders who commit their offenses on or after July 1, 1997. The court will sentence the offender to the maximum term established for the crime's classification. The court will impose a minimum term under the sentencing provision of the Sentencing Reform Act (SRA). In some cases, the offender will be under the court's jurisdiction. In others, the offender will be placed under the Indeterminate Sentence Review Board's (ISRB) jurisdiction. Still in others, the offender will be under the court's jurisdiction initially, but if the offender violates the sentence and is sent to prison, the jurisdiction will transfer to the ISRB.

In all cases, the court must order the offender to be on a form of community supervision for the statutory maximum.

Sex offenders sentenced to a term of confinement of *12 months or less* must be released upon completion of the term of confinement. If the offender violates the conditions of release, the court may impose up to 60 days in jail for each violation or may sentence the offender to the maximum statutory term and set a minimum term. The offender will serve the new term in state custody and after serving the minimum term will be under the jurisdiction of the ISRB.

Sex offenders sentenced to the *special sexual offender sentencing alternative* will be sentenced to the statutory maximum and the minimum term will be standard range for the offense. That minimum term— may be suspended and the offender will remain in community custody— for the statutory maximum period of the offense. The court may order the offender to undergo treatment for the statutory maximum period. If the offender's suspended sentence is revoked, the offender must serve the minimum term in total confinement. The offender will then fall under the jurisdiction of the ISRB.

If the offender's original sentence *exceeds 12 months* in prison, the board will determine when to release the offender.

The ISRB may establish conditions for release, procedures to determine if an offender has violated conditions of release, and procedures for periodic review of offenders remaining in confinement.

The ISRB must give public safety the highest priority in making release decisions. *An offender may*

*not be released unless the board finds that the offender's risk to the community can be reasonably managed under the ISRB's release conditions.* Criteria are established for making that determination. Conditions of release must require the offender to commit no law violations, engage in no illegal drug use, report as required, and not have any contact with victims or witnesses.

Several provisions are added to establish procedural due process provisions for handling violations of the conditions of release.

A new classification of crime is created and is labeled a B+– crime which carries a penalty of 20 years in prison, a \$30,000 fine, or both. Crimes included in that new classification are child molestation in the second degree, indecent liberties if committed by force, and incest in the first degree which are currently class B felonies. Sex offenders convicted of a B+ sex offense must register for 20 years. Attempts or criminal conspiracies or solicitations to commit class B+ felonies are class B felonies. Technical changes to the code are made to incorporate references to class B+ felonies.

Rape in the third degree, rape of a child in the third degree, incest in the second degree, and child molestation in the third degree are raised from class C felonies to class B felonies.

The provision that terminates the ISRB is repealed.

**Require the Exercise of Rule- Making Powers:** No.

**Fiscal Note:** Requested on March 21, 1997.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.