

HOUSE BILL REPORT

SHB 3124

As Passed House:

February 14, 2000

Title: An act relating to sentencing of sexually violent predators.

Brief Description: Revising sentencing for sexually violent predators.

Sponsors: By House Committee on Appropriations (originally sponsored by Representatives H. Sommers, Huff, Kessler, Ballasiotes, O'Brien and Alexander).

Brief History:

Committee Activity:

Appropriations: 2/7/00, 2/8/00 [DPS].

Floor Activity:

Passed House: 2/14/00, 95-0.

Brief Summary of Substitute Bill

- Creates an indeterminate sentencing scheme for offenders sentenced as sexually violent predators.
- Adds to the list of aggravating factors justifying an exceptional sentence with respect to offenders convicted of predatory crimes of sexual violence.
- Changes the felony classification of certain crimes when accompanied by a finding of sexual motivation or committed by force.
- Raises the felony classification for certain attempted crimes.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 32 members: Representatives Huff, Republican Co-Chair; H. Sommers, Democratic Co-Chair; Barlean, Republican Vice Chair; Doumit, Democratic Vice Chair; D. Schmidt, Republican Vice Chair; Alexander; Benson; Boldt; Clements; Cody; Crouse; Gombosky; Grant; Kagi; Keiser; Kenney; Kessler;

Lambert; Linville; Lisk; Mastin; McIntire; McMorris; Mulliken; Parlette; Regala; Rockefeller; Ruderman; Sullivan; Sump; Tokuda and Wensman.

Staff: Jean Ann Quinn (786-7310).

Background:

I. Sentencing and Confinement of Sex Offenders

Special Sex Offender Sentencing Alternative (SSOSA). SOSSA is a discretionary sentencing option that permits a judge to suspend the standard sentence with respect to certain eligible sex offenders. An offender is eligible for SSOSA if he or she has been convicted of a sex offense (if the offense is not also a serious violent offense) and has had no prior convictions for a sex offense. The court must also consider the victim's opinion about the imposition of an SSOSA sentence, the offender's amenability to treatment, and whether or not the offender and the community will benefit from this sentencing alternative.

Under SOSSA, the court imposes a sentence within the standard range for the offense, but if the sentence is less than 11 years of confinement, the court may suspend the sentence and place the defendant on community custody for the length of the sentence, or three years, whichever is greater, and require the offender to comply with other sentencing conditions. The court may impose up to six months confinement, and also must order treatment for any period up to three years. The court may revoke the suspended sentence and order execution of the original sentence if the offender violates the conditions of the suspended sentence or is failing to make satisfactory progress in treatment.

Civil Commitment of Sexually Violent Predators. Under the Community Protection Act of 1990, a sexually violent predator may be civilly committed upon the expiration of his or her criminal sentence. A sexually violent predator is a person who has been convicted of, charged with and found not guilty by reason of insanity of, or found to be incompetent to stand trial for a crime of sexual violence and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory acts of sexual violence if not confined to a secure facility. Sexually violent predators are committed to the custody of the Department of Social and Health Services for control, care, and treatment until the person's mental disorder has so changed that they are safe either to be released or transferred to a less restrictive alternative.

II. Determinate and Indeterminate Sentencing

The Sentencing Reform Act of 1981 (SRA) established the Sentencing Guidelines Commission (SGC) and required it to develop a determinate sentencing grid for adult

felony offenses. Prior to July 1, 1984, when the SRA took effect, an offender who committed a crime received an indeterminate sentence « i.e., the offender was sentenced to a maximum term of confinement by the court, but the Indeterminate Sentence Review Board (ISRB) determined the actual duration of confinement. After the offender served the minimum period fixed by the ISRB, the ISRB was authorized to release the offender on parole, and could return the offender back to confinement for violations of parole following procedures established by statute. Offenders who committed crimes prior to July 1, 1984, are still under the jurisdiction of the ISRB. The ISRB consists of a chairman and two other members, each of whom are appointed by the Governor with the consent of the Senate. The chair of the ISRB is also an ex officio member of the SGC. The ISRB will cease to exist on June 30, 2008.

Since the enactment of the SRA, all offenders receive determinate sentences based on the seriousness of the offense and the offender's prior criminal history. Under the SRA, the court must impose a sentence within the standard sentence range established for the offense, except in certain specified instances, or unless the court finds that there are substantial and compelling reasons justifying an exceptional sentence. In this event, the court must set forth the reasons for its decision in writing, and the exceptional sentence must also be determinate. The SRA provides a non-exclusive list of aggravating circumstances that can justify an exceptional sentence. Facts that establish the elements of a more serious crime or additional crimes may not be used to go outside the standard range except as specifically authorized.

III. Attempt Crimes

A person is guilty of an attempt to commit a crime if he or she does any act that is a substantial step toward the commission of that crime, with the intent to commit the crime. The attempt is a class A felony when the attempted crime is one of the following class A felonies: first or second degree murder or first degree arson. The attempt is a class B felony when the attempted crime is any other class A felony. The attempt is a class C felony when the attempted crime is a class B felony. The attempt is a gross misdemeanor when the attempted crime is a class C felony, and a misdemeanor when the attempted crime is a gross misdemeanor or misdemeanor.

IV. Assault; Kidnapping; Indecent Liberties

Assault in the second degree is committed in several ways, such as by inflicting substantial bodily harm, by using a deadly weapon, and by knowingly inflicting harm that is the equivalent of torture. Second-degree assault is a class B felony.

A person is guilty of second-degree kidnapping if he or she intentionally abducts another person under circumstances not amounting to first-degree kidnapping. The crime is a class B felony.

A person is guilty of indecent liberties if he or she knowingly causes another person who is not his or her spouse, to have sexual contact: (1) by forcible compulsion; (2) if the victim is incapable of consent; or (3) under certain circumstances, if the victim is developmentally disabled, a patient, a resident of a facility for mentally disordered or chemically dependent persons, or a frail or vulnerable adult. The crime is a class B felony.

Summary of Bill:

I. Sentencing and Confinement of Sex Offenders

Criminal Sentencing for Sexually Violent Predators. A new sentencing scheme is added to the SRA for an offender who commits a predatory crime of sexual violence. This is defined as one of the following offenses when committed against a stranger or an individual with whom a relationship was established or promoted for the purpose of victimization: First- or second-degree rape, first- or second-degree rape of a child, first-degree child molestation, and indecent liberties by forcible compulsion. It also includes the following crimes under the same circumstances when accompanied by a finding of sexual motivation: first-or second-degree murder, homicide by abuse, first- or second-degree kidnapping, first- or second-degree assault, first-degree assault of a child, and first- degree burglary. Finally, it includes an attempt to commit any of the above-listed crimes.

An offender is sentenced as a sexually violent predator if the offender commits a sex offense after July 1, 2000, and the court finds that the offense, or any prior offense, was a predatory crime of sexual violence. The option is not available if the offender is a persistent offender for the purposes of the "two-strikes" law. If the court finds that sentencing as a sexually violent predator applies, the court must impose one of the following sentences: (1) SSOSA if the offender is otherwise eligible; or (2) a maximum term equal to the statutory maximum for the offense and a minimum term either within the standard sentence range for the offense or outside the standard sentence range if the criteria for imposing an exceptional sentence are otherwise satisfied.

An offender sentenced as a sexually violent predator must be given the opportunity for treatment during his or her incarceration. As part of the end-of-sentence review process, the Department of Corrections (DOC) must conduct an examination of the offender, including an evaluation of the probability that the offender will commit a predatory crime of sexual violence if released. Ninety days prior to release, the ISRB must hold a hearing to determine the likelihood of the offender's committing a predatory crime of sexual violence if released on conditions set by the ISRB. An

offender's refusal to be evaluated can be considered in making this determination. Unless the board determines that it is more likely than not that the offender will commit another predatory crime of sexual violence if released, the offender must be released under conditions set by the board. Otherwise, a new minimum term must be established. An offender who is released must be supervised by the DOC for compliance with the required conditions, which can be modified at any time, until the expiration of the maximum term of the sentence.

An offender who violates a condition of release can be arrested and detained by a community corrections officer. When an offender is accused of violating a condition of release, other than the commission of a new crime, the offender is entitled to a revocation hearing before one or more members of the ISRB within 30 days. The offender can waive his or her right to a revocation hearing and admit the allegations. In this event, the ISRB can reinstate the offender's release with the same or modified conditions, or revoke release, return the offender to state custody, and determine a new minimum sentence. If the offender elects a hearing, he or she is entitled to an attorney at his or her own expense. If the offender is indigent, an attorney may be appointed for him or her at state expense. At the hearings, the ISRB has the authority to administer oaths, examine witnesses, receive evidence, and issue subpoenas for the attendance of witnesses and the production of evidence. The community corrections officer who made the allegations of a violation of release conditions may be represented by the attorney general. The offender may be requested to testify and the testimony shall be used against the offender in any criminal prosecution. The ISRB must make its decision within 10 days after the hearing. The ISRB may modify the conditions of release, impose sanctions based on an administrative grid, or return the offender to state custody. The DOC must make available to the ISRB, on request, any information in its possession about the offender in order to assist the ISRB in carrying out its duties.

SSOSA. An offender who is found to be a sexually violent predator may be sentenced to *SSOSA* if the offender is otherwise eligible. If so, the court must still impose a minimum term of confinement within the standard range for the offense and a maximum term equal to the statutory maximum for the offense, and then suspend those sentences. If the offender violates the conditions of *SSOSA* and his or her suspended sentence is revoked, the offender can only be released as provided in the new sentencing scheme for sexually violent predators.

II. Determinate and Indeterminate Sentencing

An exceptional sentence imposed on a sexually violent predator is not a determinate sentence. Instead, the court sentences the offender to a minimum term set by the court (either within the standard range or outside the range if the criteria for imposing an exceptional sentence are met) and a maximum term equal to the statutory maximum for the crime.

The following are aggravating factors the court may consider when imposing an exceptional sentence when an offender has been convicted of a predatory crime of sexual violence: (1) the fact that the offender has a history of such acts, and lacks amenability to treatment; and (2) the fact that the offender has been convicted of such a crime, and his or her conduct involved multiple incidents of cruelty or sexual deviance, directed at the victim over a long period of time.

The ISRB will not terminate as scheduled on June 30, 2008, and the chair of the ISRB will continue to sit as an ex officio member of the Sentencing Guidelines Commission. Relevant provisions of law regarding indeterminate sentences will now also apply to offenders sentenced as sexually violent predators.

III. Attempt Crimes

When the attempted crime is first-degree child molestation, indecent liberties by forcible compulsion, first- or second-degree rape, or rape of a child, the attempt is a class A felony.

IV. Assault; Kidnapping; Indecent Liberties

Assault in the second degree and kidnapping in the second degree become class A felonies when accompanied by a finding of sexual motivation. Indecent liberties is a class A felony when committed by forcible compulsion.

Rulemaking authority is granted to the secretary of the DOC and the ISRB.

Appropriation: None.

Fiscal Note: Requested on February 7, 2000.

Effective Date: Ninety days after adjournment of session in which bill is passed, but applies with respect to offenses committed on or after July 1, 2000. However, the bill is null and void unless funded in the budget.

Testimony For: The state needs to get a handle on the issues and costs presented by the special commitment center. This may or may not be the best way to do that, but it is good long-term policy to get this proposal in front of the Legislature. While this proposal will not save costs in the very short term at the special commitment center, it may be a very good idea over the long-term. The current system is unlikely to balance the needs of sexual violent predators with the needs of their victims and this may do that better.

Testimony Against: None.

Testified: Tom McBride, Washington Association of Prosecuting Attorneys; and Lonnie Johns-Brown, Washington Coalition of Sexual Assault Programs.