

SENATE BILL REPORT

SB 5236

As of January 20, 2011

Title: An act relating to persistent offenders.

Brief Description: Providing a minimum term sentence for certain persistent offenders.

Sponsors: Senators Kline and Kohl-Welles.

Brief History:

Committee Activity: Judiciary: 1/19/11.

SENATE COMMITTEE ON JUDICIARY

Staff: Juliana Roe (786-7438)

Background: There are currently 229 offenders in prison pursuant to a three-strikes sentence; a sentence of life in prison without the possibility of parole. This number does not include those whose third strike was for aggravated murder in the first degree. A person is considered a persistent offender if the person commits three most serious offenses.

Most serious offense means any of the following felonies or a felony attempt to commit any of the following felonies:

1. any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;
2. assault in the second degree;
3. assault of a child in the second degree;
4. child molestation in the second degree;
5. controlled substance homicide;
6. extortion in the first degree;
7. incest when committed against a child under age 14;
8. indecent liberties;
9. kidnapping in the second degree;
10. leading organized crime;
11. manslaughter in the first degree;
12. manslaughter in the second degree;
13. promoting prostitution in the first degree;
14. rape in the third degree;
15. robbery in the second degree;

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16. sexual exploitation;
17. vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;
18. vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;
19. any other class B felony offense with a finding of sexual motivation;
20. any other felony with a deadly weapon verdict under RCW 9.94A.602;
21. any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;
22. a prior conviction for indecent liberties under
 - a. RCW 9A.88.100(1) (a), (b), and (c), Chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979; RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986; and RCW 9A.44.100 (1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
 - b. RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if:
 - i. the crime was committed against a child under the age of 14; or
 - ii. the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997; or RCW 9A.44.100 (1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997.

The Indeterminate Sentence Review Board (ISRB) was created in 1986. The ISRB is a Washington State Agency whose chair and four board members are named by the Governor. The ISRB is responsible for two types of offenders: (1) felony offenders who committed crimes before July 1, 1984, and went to prison; and (2) a select group of sex offenders who committed offenses after August 31, 2001. The ISRB makes decisions about releasing these types of offenders from prison. In making these decisions, the ISRB conducts a thorough analysis of an offender's crime, past and present behavior, and possible risks. The ISRB takes action if offenders who are on supervision in the community break the rules of supervision.

Summary of Bill: Persistent offenders, who do not have a prior or current conviction for a class A felony or a sex offense, or an equivalent federal or out-of-state conviction, or a prior or current conviction with a deadly weapon verdict, are subject to sentences in which the court imposes both a maximum and a minimum term. The maximum term is a sentence of life without the possibility of early release and the minimum term is the greater of 15 years, the high end of the standard range for the current offense, or an exceptional sentence above the standard range. These offenders are not eligible for earned early release or reduction in the minimum term. The court will also sentence the offender to community custody under the supervision of the Department of Corrections (DOC) and the authority of the ISRB for any period of time the person is released from total confinement.

When the offender has served the mandatory minimum term in total confinement, the ISRB has the authority to conditionally release the offender. The ISRB also has jurisdiction over

offenders who were sentenced prior to the effective date of this act. The ISRB cannot release the offender unless in its opinion the offender has been rehabilitated. The offender may petition the ISRB for release any time after the minimum sentence has been served, and must prove by clear and convincing evidence that his or her rehabilitation is complete, and prove that he or she is fit for release. If the petition is denied, the offender must wait a minimum of one year from the date of denial to reapply for release. If conditional release is granted, the ISRB is required to retain jurisdiction for the remainder of the offender's life with the power to revoke if the offender violates any conditions. DOC is charged with monitoring for compliance.

Appropriation: None.

Fiscal Note: Requested on January 16, 2011.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This bill creates a review mechanism for those who committed the least serious offenses under the Three Strikes Law, yet face a life sentence. Currently, all three strikers are treated equally. This law allows us to distinguish between the least of the worst and the worst of the worst. This is important because prior to the Three Strikes Law someone who was convicted of robbery in the second degree, a level IV offense, for the third time would be eligible for a sentence of 15-20 months. However, under the Three Strikes Law, that same person would be sentenced to life in prison. That is a big difference. This bill would allow us to take a look at this person after 15 years and review his or her situation. The ISRB would review many things, including institutional conduct, program involvement, reentry issues, etc. This is a conservative bill and applies to less than 5 percent of those who are locked up.

The Clemency and Pardons Board is part-time, its members are volunteers, and its decisions are merely advisory to the governor who makes the final decision. The ISRB is a more appropriate board to review these cases because it is a full-time, decision-making board. The Clemency and Pardons Board sees very few cases each year, and very few of those cases reach public hearing. It is not set up to review a large caseload. The ISRB hears about 30 cases per month. While clemency and pardons are possible, they are realistically and practically not available.

CON: This legislation does have some merits. However, there are two flaws that should be addressed. The first is that when the three strikes legislation was initially passed, it was made clear by its supporters that there were two types of criminals targeted: (1) dangerous thugs and (2) those who commit less severe yet more numerous offenses over time. The second flaw is that when three strikes passed we created a door that was not opened very wide that would allow people to go through the process of seeking clemency and pardons, so long as the Governor made the final clemency or pardon decision. The Governor was chosen as the final decision maker so that an elected official would be accountable to the people. Having an un-elected board of people make the decisions, as is suggested in this bill, means that no one will be made accountable

Persons Testifying: PRO: Dan Satterberg, Tom McBride, Washington Association of Prosecuting Attorneys; John Turner, Snohomish County Police Chief; Lynn DeLano, ISRB; Minister W. D. Patterson, Outreach Ministries, USA; Renee McCoy, Precinct Committee Officer Organize for America; Steven Dozier, citizen.

CON: John Carlson, citizen.