

SENATE BILL REPORT

SB 5236

As Reported by Senate Committee On:
Judiciary, February 18, 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, 2/18/11 [DPS, DNP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5236 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Harper, Vice Chair; Pflug, Ranking Minority Member; Baxter, Hargrove, Kohl-Welles, Regala and Roach.

Minority Report: Do not pass.
Signed by Senator Carrell.

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;

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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;
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 anytime 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 (Recommended Substitute): Persistent offenders, who do not have (1) a prior or current conviction for a class A felony, assault in the second degree, or a sex offense, or (2) a federal or out-of-state conviction for an offense that under the laws of this state would be considered a class A felony, assault in the second degree, or a sex offense, or (3) a

prior or current conviction with a deadly weapon verdict under RCW 9.94A.825 or 9.95.015, or (4) a federal or out-of-state conviction for which the offender would be required to register as a sex offender while residing in the state of conviction, or (5) a federal or out-of-state conviction that included a finding, whether as an element of the offense or for the purpose of imposing a sentencing enhancement, that offender was armed with a deadly weapon, with a dangerous weapon, or with a firearm, as those terms are defined in the jurisdiction of conviction, or (6) a federal or out-of-state conviction for an offense for which the sentencing court imposed a sentence of incarceration, supervision, or probation, or a combination thereof, of ten or more years. 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 anytime after the minimum sentence has been served, and must prove by clear and convincing evidence that his or her rehabilitation is complete and that he or she is fit for release. If the petition is denied by the ISRB, the offender must wait a period of time as set by the ISRB not to exceed five years from the date of denial to repetition for release.

The ISRB must make all reasonable efforts to notify victims, at least 30 days prior to any release hearing, of all of the offenses that qualified the offender as a persistent offender so that the victims can provide input. Prosecutors must also be notified. The ISRB must consider input provided by the victims.

The ISRB must conduct, and an offender must participate in, an examination prior to each release hearing. The ISRB can consider the offender's failure to participate in the exam in its determination as to whether the offender should be released.

If conditional release is granted, the ISRB must impose conditions and retain jurisdiction for the remainder of the offender's life. The ISRB can impose or modify conditions if the offender is provided notice. DOC is charged with monitoring for compliance.

If conditional release is granted by the ISRB, the Governor has the opportunity to reject the ISRB's decision to grant conditional release, in writing, within 60 days of the ISRB's decision to grant release. If the Governor rejects the ISRB's decision, the offender's petition for release is denied. If the Governor fails to act on the ISRB's decision within 60 days, the offender's petition for release is denied. If the offender's petition is denied, the board must set a new minimum term not to exceed five years from the date on which the petition was denied.

Offenders who have been released by the ISRB under this act, alleged to have violated any condition or requirement of release must be transferred to confinement in a correctional institution while awaiting disposition of a violation hearing conducted by the ISRB. If the ISRB finds, pursuant the hearing, that the offender violated any condition or requirement of release, the ISRB can revoke the offender's release and impose upon the offender the remaining portion of the offender's life sentence. These offenders must then serve a minimum of five years of total confinement, without reduction, from the date on which the ISRB revoked conditional release before they can re-petition the ISRB for conditional release. If the ISRB finds that the violation is not sufficient cause for revocation of conditional release, the ISRB can reinstate these offenders on community custody. The ISRB can impose additional sanctions or conditions or requirements of community custody for those offenders who are reinstated.

Offenders who have been released by the ISRB under this act, alleged to have violated three conditions or requirements of release within a six-month period, must be transferred to confinement in a correctional institution while awaiting disposition of a violation hearing conducted by the ISRB. If the ISRB finds, pursuant the hearing, that the offender violated three conditions or requirements of release within a six-month period, the ISRB must revoke the offender's release and impose upon the offender the remaining portion of the offender's life sentence. These offenders must then serve a minimum of five years of total confinement, without reduction, from the date on which the ISRB revoked conditional release, before they can re-petition the ISRB for conditional release.

Offenders who have been released by the ISRB under this act, who are convicted of any felony, must be transferred to confinement in a correctional institution while awaiting disposition of a violation hearing conducted by the ISRB. If the ISRB finds, pursuant the hearing, that the offender was convicted of a most serious offense, the ISRB must revoke the offender's release and impose upon the offender the remaining portion of the offender's life sentence without the possibility of release. If the ISRB finds, pursuant the hearing, that the offender was convicted of a felony that is not a most serious offense, the ISRB must revoke the offender's release and impose upon the offender the remaining portion of the offender's life sentence. The offender may re-petition the ISRB for conditional release after ten years in total confinement, without reduction.

EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Substitute): DOC must supervise offenders sentenced to community custody if the offender has been released by the ISRB if the offender was sentenced as a persistent offender but does not have (1) a prior or current conviction for a class A felony, assault in the second degree, or a sex offense, or (2) a federal or out-of-state conviction for an offense that under the laws of this state would be considered a class A felony, assault in the second degree, or a sex offense, or (3) a prior or current conviction with a deadly weapon verdict under RCW 9.94A.825 or 9.95.015, or (4) a federal or out-of-state conviction for which the offender would be required to register as a sex offender while residing in the state of conviction, or (5) a federal or out-of-state conviction that included a finding, whether as an element of the offense or for the purpose of imposing a sentencing enhancement, that offender was armed with a deadly weapon, with a dangerous weapon, or with a firearm, as those terms are defined in the jurisdiction of conviction, or (6) a federal or out-of-state conviction for an offense for which

the sentencing court imposed a sentence of incarceration, supervision, or probation, or a combination thereof, of ten or more years.

Offenders may file their petitions in writing with the ISRB anytime after they have served the minimum set sentence.

An offender must wait a minimum term to appear in front of the board for a subsequent release hearing, as set by the board, if an offender's petition has been denied by the ISRB. The term is set by the ISRB not to exceed five years from the date of denial. An offender is only required to submit a petition for the initial release hearing and not subsequent release hearings.

The ISRB must notify the offender's victims for those offenses that qualified the offender as a persistent offender once it receives the offender's petition for release. The victims have at least 30 days to provide input to the board regarding the offender's release. Prosecutors must also be notified. The board must consider any input provided by the victims.

The ISRB must conduct, and an offender to participate in, an examination prior to each release hearing. The ISRB can consider the offender's failure to participate in an exam in its determination as to whether the offender should be released.

The ISRB must impose conditions for those offenders who are released. The ISRB can impose or modify conditions if the offender is provided notice.

The Governor can reject the board's decision to grant conditional release, in writing, within 60 days of the board's decision to grant release. If the Governor rejects the board's decision, the offender's petition for release is denied. If the Governor fails to act on the board's decision within 60 days, the offender's petition for release is denied. If the offender's petition is denied, the board must set a new minimum term not to exceed five years from the date on which the petition was denied.

Offenders, released by the ISRB under this act alleged to have violated any condition or requirement of release, must be transferred to confinement in a correctional institution while awaiting disposition of a violation hearing conducted by the board. If the ISRB finds, pursuant the hearing, that the offender violated any condition or requirement of release, the ISRB can revoke the offender's release and impose upon the offender the remaining portion of the offender's life sentence. These offenders must then serve a minimum of five years of total confinement, without reduction, from the date on which the ISRB revoked conditional release before they can re-petition the ISRB for conditional release. If the ISRB finds that the violation is not sufficient cause for revocation of conditional release, the ISRB can reinstate these offenders on community custody. The ISRB can impose additional sanctions, conditions, or requirements of community custody for those offenders who are reinstated.

Offenders, released by the ISRB under this act alleged to have violated three conditions or requirements of release within a six-month period, must be transferred to confinement in a correctional institution while awaiting disposition of a violation hearing conducted by the ISRB. If the ISRB finds, pursuant the hearing, that the offender violated three conditions or requirements of release within a six-month period, the ISRB must revoke the offender's

release and impose upon the offender the remaining portion of the offender's life sentence. These offenders must then serve a minimum of five years of total confinement, without reduction, from the date on which the ISRB revoked conditional release, before they can re-petition the ISRB for conditional release.

Offenders, released by the ISRB under this act who are convicted of any felony, must be transferred to confinement in a correctional institution while awaiting disposition of a violation hearing conducted by the ISRB. If the ISRB finds, pursuant the hearing, that the offender was convicted of a most serious offense, the ISRB must revoke the offender's release and impose upon the offender the remaining portion of the offender's life sentence without the possibility of release. If the ISRB finds, pursuant the hearing, that the offender was convicted of a felony that is not a most serious offense, the ISRB must revoke the offender's release and impose upon the offender the remaining portion of the offender's life sentence. The offender may re-petition the ISRB for conditional release after ten years in total confinement, without reduction.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill: 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.