
Public Safety Committee

HB 1789

Brief Description: Concerning rehabilitated offenders.

Sponsors: Representatives Jinkins, Pettigrew, Frame, Stambaugh, Ortiz-Self, Fitzgibbon, Macri, Ormsby and Gregerson.

Brief Summary of Bill

- Creates the Community Review Board within the Office of the Governor.
- Allows certain offenders (with some exclusions) to petition the Community Review Board for early release after serving 20 years in prison.
- Mandates community custody for offenders released by the Community Review Board until expiration of the original sentence imposed by the court.
- Requires the Sentencing Guidelines Commission to contract with a consultant to study sentencing laws and practices and make recommendations to the Legislature.

Hearing Date: 2/14/17

Staff: Kelly Leonard (786-7147).

Background:

Determinate Sentencing. In 1981 the Legislature passed the Sentencing Reform Act (SRA), which established determinate sentencing for felony offenders. The SRA eliminated indeterminate sentences and parole in Washington, with some exceptions. Instead, the SRA determines a specific sentence within the statutory maximum. Judges select an offender's sentence within a sentence range provided in statute, which is calculated using both a statutory severity designation for the offense, or its "seriousness level," and the offender's "offender score," which is based on the offender's criminal history. In addition to the standard range, other factors affect the sentence, including: enhancements; exceptional sentences; consecutive/concurrent sentences; persistent offender ("Three Strikes" and "Two Strikes") laws; and alternative sentences.

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.

Some offenders are eligible for earned early release for good behavior and good performance. The amount of the sentence eligible for earned early release varies depending on the circumstances of the offender's underlying offense and date of conviction. Earned early release is limited to 10 percent for class A felony sex offenses and serious violent offenses, and 33 percent for other offenses. Many sentences are not eligible for earned early release, including portions of sentences for mandatory firearm or deadly weapon enhancements.

Review of Sentences. There are some exceptions to determinate sentencing where certain offenders are eligible for review after serving a minimum term, including:

- offenders convicted before the enactment of the SRA, July 1, 1984;
- sex offenders who committed their offenses after August 31, 2001, and who have "indeterminate-plus" sentences rather than determinate sentences; and
- offenders who committed crimes under the age of 18 and were sentenced for terms longer than 20 years.

The above offenders are eligible for review by the Indeterminate Sentence Review Board (ISRB) after serving a certain number of years. The ISRB decides whether to release an offender, and if an offender is released, he or she is placed in community custody for a specified period.

Community Custody. Community custody is the portion of an offender's sentence served in the community subject to supervision by the Department of Corrections (DOC). Courts are mandated to order community custody for offenders convicted of certain crimes. If an offender violates the conditions of community custody, the offender may be required to serve up to the remaining portion of his or her sentence in confinement.

Sentencing Guidelines Commission. The Sentencing Guidelines Commission (SGC) was created as part of the SRA to serve as an independent body statutorily required to evaluate and monitor adult and juvenile sentencing policies and practices.

Summary of Bill:

Community Review Board. The Community Review Board (Board) is created within the Office of the Governor. The Governor must appoint 11 members to the Board including representatives of certain interests and organizations specified in the bill. Initial appointments are for staggered terms, and then subsequent terms are for five years. The Board may not meet less than four times during each calendar year. The Board may meet and transact business in panels composed of five members.

Petition and Hearing for Early Release. Regardless of other sentencing laws, any offender convicted of and incarcerated for one or more crimes may petition the Board for early release after serving 20 years of total confinement, provided the offender has not committed a major violation in the 12 months prior to filing the petition for early release, and the current sentence was not imposed for:

- an offense committed before July 1, 1984, where the offender is eligible for review by the ISRB;
- an offense committed before the offender's eighteenth birthday where the offender is eligible for review by the ISRB;

- Aggravated First Degree Murder; or
- a sex offense, including both sex offenses under Determinate-Plus and other sex offenses.

After an eligible offender has served 15 years in total confinement, the DOC is required to conduct an assessment of the offender and identify appropriate programming to prepare the offender for return to the community. Within six months of receiving the petition, the DOC will conduct an examination of the offender, including a prediction of the probability that the person will engage in future criminal behavior.

The Board must conduct a hearing on a petition within 12 months of receiving it, except the Governor may extend the deadline if the Board is processing a high number of petitions. An offender does not have a right to appointed counsel for early release proceedings. The Board must give public safety considerations the highest priority when making decisions regarding the ability for release and conditions of release. The Board must also consider the following additional factors:

- the offense;
- the offender's sentence;
- any relevant findings of the sentencing court;
- the offender's time served in total confinement;
- the offender's criminal history;
- the offender's risk assessment scores;
- the offender's behavior before and during incarceration, including, but not limited to, infraction history, educational history, and work history;
- the offender's responsiveness to programming;
- the offender's acceptance of responsibility, remorse, and atonement;
- the offender's personal development and life changes since the offense occurred;
- the offender's social and medical history;
- input from the victims;
- input from the prosecutors, defense attorneys, and judges involved in the offender's sentence;
- input from the community, including, but not limited to, those who pledge support of the offender, if released;
- the resources in the community to facilitate successful reentry, if released; and
- any other relevant factors.

The bill includes procedures for notice to victims, the prosecutor, and the court, including mandatory disclosure of certain documents. The Board must provide opportunities for victims and survivors of victims to present statements as set forth in current victims' rights laws. The Board must publish and regularly update a list of current petitions being considered.

After a hearing, the Board may order the offender released with conditions. An offender whose petition for release is denied may file a new petition for release five years from the date of denial or at an earlier date as may be set by the Board.

Review by the Governor. The Governor must review each decision of the Board within 60 days. The Governor may approve or reverse a decision of the Board. If the Governor does not issue a decision within 60 days, the Board's decision on the petition is deemed approved.

Community Custody. When the Board orders early release, the Board must order and DOC must enforce community custody for any period of time the person is released from total confinement before the expiration of the original sentence, including total and partial confinement, imposed by the court. The DOC must monitor the offender's compliance with conditions of community custody.

Study. Subject to a specific appropriation, by December, 2017, the SGC must contract for the services of an external consultant to evaluate the state's sentencing laws and practices. The consultant must have demonstrated experience and knowledge in Washington's sentencing system. The evaluation must include an assessment of:

- sentencing complexities in law and in implementation, including an assessment of possible challenges faced by the courts, jails, and the DOC;
- whether the sentencing reform act conforms to its intended purposes, including reducing disparity between similarly situated offenders;
- the sentencing changes adopted by the Legislature since 1981, including frequency, nature, and impact;
- sentence lengths among different categories of offenders and whether those sentences conform to current research literature on the relationship between sentences lengths and recidivism;
- whether the elimination of the parole system and establishment of determinate sentencing is connected to or has resulted in excessive incarceration of low risk offenders; and
- the state's sentencing laws and practices as compared to other states and other sentencing models, including whether the current sentencing laws and practices promote public safety, fairness, and equity as compared to other models of sentencing.

The consultant must report recommendations for changing and improving sentencing laws and practices to address implementation challenges, promote public safety, reduce recidivism, reduce disparity, reduce incarceration rates for low risk offenders, reduce costs to taxpayers, and promote fairness and equity, including a phased implementation plan for possible retroactive and prospective changes, as well as recommendations for establishing an ongoing review of sentencing laws and practices. The consultant must submit a report to the SGC, the appropriate committees of the Legislature, and the Governor by September 1, 2018.

Appropriation: None.

Fiscal Note: Requested on February 10, 2017.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.