

HOUSE BILL REPORT

2SHB 1789

As Passed House:
March 3, 2017

Title: An act relating to rehabilitated offenders.

Brief Description: Concerning sentencing laws and practices.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Jinkins, Pettigrew, Frame, Stambaugh, Ortiz-Self, Fitzgibbon, Macri, Ormsby and Gregerson).

Brief History:

Committee Activity:

Public Safety: 2/14/17, 2/16/17 [DPS];
Appropriations: 2/22/17 [DP2S(w/o sub PS)].

Floor Activity:

Passed House: 3/3/17, 77-20.

Brief Summary of Second Substitute Bill

- Requires the Sentencing Guidelines Commission to contract with a consultant to study sentencing laws and practices and make recommendations to the Legislature.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Goodman, Chair; Pellicciotti, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Chapman, Griffey, Holy, Orwall, Pettigrew and Van Werven.

Staff: Kelly Leonard (786-7147).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Public Safety.

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.

Signed by 23 members: Representatives Ormsby, Chair; Robinson, Vice Chair; MacEwen, Assistant Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Bergquist, Calder, Cody, Fitzgibbon, Hansen, Hudgins, Jinkins, Kagi, Lytton, Manweller, Pettigrew, Pollet, Sawyer, Senn, Springer, Stanford, Sullivan, Tharinger and Wilcox.

Minority Report: Do not pass. Signed by 9 members: Representatives Chandler, Ranking Minority Member; Buys, Condotta, Haler, Harris, Schmick, Taylor, Vick and Volz.

Minority Report: Without recommendation. Signed by 1 member: Representative Nealey.

Staff: Jordan Clarke (786-7123).

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.

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 Second Substitute Bill:

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 Department of Corrections;
- 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: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony (Public Safety):

(In support) The bill is the result of many conversations with persons whose family members committed crimes in their late teens and early twenties for which they are now serving very long prison sentences. Those crimes vary in nature. Some were particularly violent, and some were gang-related. However, these people were young adults acting during destructive phases in their lives, often involving the influence of drugs and alcohol. Since then, they have changed dramatically. They are not the same people they were.

There are numerous examples of reformed incarcerated persons getting an education, volunteering to assist other inmates and the community, and making efforts to parent their children from a distance. They are remorseful, kind, and intelligent human beings who deserve a second chance at life. As a result of "tough on crime" laws and the elimination of parole, they do not currently have this chance. Excessive sentences are keeping them in prison for decades longer than necessary. Many will die in prison. This not only affects those incarcerated, but also their families. Families are missing potential providers and parents.

The SRA's elimination of parole has promoted mass incarceration, which is ineffective, costly, and often disproportionate. The SRA is based on the premise that 'nothing works,' or more specifically, that people are stagnant and do not change. Researchers in the 1970s and 1980s advocated for the determinate sentencing model based on a claim that the only solution to crime is to lock people up. However, those researchers later disavowed the model. There is overwhelming evidence demonstrating that people do change, and people can be rehabilitated. Furthermore, people even change when they are involuntarily subjected to rehabilitative programming.

The SRA is currently structured in such a manner that low-risk offenders are unnecessarily kept in prison for decades, and high-risk offenders are let out. In addition, studies show that the possibility of early release incentivizes offenders to reform and change. On the other hand, the absence of such an opportunity has the inverse effect. For those offenders who can safely be released, the state should have a thoughtful and thorough review process.

An examination of the system is long overdue. The early release process created in the bill will give certain offenders an opportunity to plead their case before a new board. They must prove they are rehabilitated, and the board can only release those who meet the criteria when it is in the public interest. The state should take the important step of restoring humanity and fairness to the criminal justice system by giving incarcerated persons this opportunity.

The bill's creation of a Community Review Board is also important. The review process for early release should include community voices and involvement.

Legislators should not forget about the theological and humanitarian concepts underpinning sentencing. No one is saying that there should not be consequences to crimes. There should be consequences. And the state should carry out sentences in the interests of victims' rights and restitution. But there should also be space for and acknowledgment of redemption. There should be an opportunity for forgiveness. It is appropriate that the Public Safety Committee is considering this bill on Valentine's Day, a day commemorating Saint Valentinus, who sent letters from prison.

(Opposed) The bill undermines truth and certainty in sentencing. Judges, prosecutors, victims, and communities have an expectation that the sentence imposed will be carried out. This bill violates those expectations. In addition, sentences must balance moral accountability with rehabilitation. Society appears to be shifting towards rehabilitation, which is appropriate, but it is important to not go too far. This bill significantly threatens moral accountability. Sentences of over 20 years are imposed for heinous crimes, like murder, manslaughter, and Three Strikes. Long sentences can be deserved.

The state already has a review process for early release through the Pardons and Clemency Board. The Pardons and Clemency Board has a process for victim notification as well as many of the other components proposed in the bill; it can and does release offenders every year. If this process is not working, then the state should examine it and make changes to it. It does not make sense to create a duplicative and separate review process.

This bill is an assault on victims' rights. Victims of homicide do not get second chances. Families have lost loved ones, including children, to horrific crimes committed by those serving long sentences in prison. These sentences are deserved. The bill, which provides perpetrators with a path to early release, is morally objectionable. The bill makes claims regarding youth brain development to excuse crimes, but this demeans the 99 percent of youth that harm no one.

Model prisoners do not always make model citizens. Many prisoners belong in a controlled environment without access to firearms.

Staff Summary of Public Testimony (Appropriations):

(In support) It is good for the Appropriations Committee to hear a bill on the issue of sentencing guidelines because there are potentially high savings for the state. This topic has been considered around the county. Research suggests that people who have been in prison for a long time are less likely to recidivate.

There is some concern regarding the bill because it could miss an opportunity to allow the Sentencing Guidelines Commission (Commission) to review sentencing policies. It is suggested that the Commission be allowed to retain consultants so that the Commission leads the review. The review should focus on the parole system, changes in sentencing laws, and establishing a review of sentencing guidelines.

(Opposed) None.

Persons Testifying (Public Safety): (In support) Representative Jinkins, prime sponsor; Virginia Parham; Cassandra Butler; Tim Wettack, Sentencing Guidelines Commission; Kendra Roberts; Noreen Light; Gerald Hankerson, National Association for the Advancement of Colored People; Kim Nobles; Colette McCullum; Xochitl Maykovich and April Harris, Washington Community Action Network; Deanna Cleman; Dawud Al-Malik; and Paul Benz, Faith Action Network.

(Opposed) Jon Tunheim, Thurston County Prosecuting Attorney's Office; Rich Weyrich, Skagit County Prosecuting Attorney's Office and Washington Association of Prosecuting Attorneys; Tom McBride, Washington Association of Prosecuting Attorneys; and Dan Clements.

Persons Testifying (Appropriations): William Daley, Washington Community Action Network; and Russell Hauge, Sentencing Guidelines Commission.

Persons Signed In To Testify But Not Testifying (Public Safety): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.