

# HOUSE BILL REPORT

## 2SHB 1789

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### As Reported by House Committee On:

Public Safety  
Appropriations

**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], 1/18/18, 2/1/18 [DP3S];

Appropriations: 2/22/17 [DP2S(w/o sub PS)], 2/5/18, 2/6/18 [DP4S(w/o sub PS)].

#### Brief Summary of Fourth Substitute Bill

- Requires the Sentencing Guidelines Commission to study sentencing laws and practices and make recommendations to the Legislature and the Governor.

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## HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** The third substitute bill be substituted therefor and the third substitute bill do pass. Signed by 10 members: Representatives Goodman, Chair; Pellicciotti, Vice Chair; Klippert, Ranking Minority Member; Appleton, Chapman, Griffey, Holy, Orwall, Pettigrew and Van Werven.

**Staff:** Kelly Leonard (786-7147).

### Background:

*Sentencing.* In 1981 the Legislature passed the Sentencing Reform Act (SRA), which established determinate sentencing for felony offenders. The Sentencing Reform Act eliminated indeterminate sentences and parole in Washington, with some exceptions. Instead, the SRA determines a specific sentence within the statutory maximum. Judges select

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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.

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### **Summary of Third Substitute Bill:**

Subject to an appropriation, the SGC must conduct a comprehensive review of the SRA and make recommendations to accomplish the following goals:

- assess the degree to which the SRA as applied has achieved each of its stated purposes;
- ensure Washington sentencing policies and practices are evidence-based, aligned with best practices, and consistent with federal and state case law;
- simplify Washington's sentencing laws to make them easier to understand and apply; and
- eliminate inconsistencies, which may have developed through various amendatory changes.

The SGC must review several specified items, including:

- the general sentencing grid and seriousness levels, drug sentencing grid and seriousness levels, mandatory minimum terms, and other related provisions;
- mitigating and aggravating factors and sentencing enhancements;
- fines, fees, and other legal financial obligations;
- community supervision and community custody programs; and
- alternatives to full confinement.

The SGC must report its findings and recommendations to the Governor and Legislature by May 1, 2019.

### **Third Substitute Bill Compared to Second Substitute Bill:**

The SGC is required to conduct the study, rather than contracting with an external consultant. The SGC must conduct a comprehensive review of the SRA and make recommendations to accomplish a set of prescribed goals (rather than reviewing sentencing laws and practices).

The scope and purpose of the study is modified.

The report is due to the Governor and Legislature by May 1, 2019 (rather than September 1, 2018).

The null and void clause is removed.

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**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on February 3, 2018.

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

**Staff Summary of Public Testimony:**

(In support) This bill is about whether or not our society believes in rehabilitation. If it does, then the state should consider recognizing the rehabilitation of some offenders and balancing this with public safety. Sentencing is an incredibly complex issue. However, it is time to examine the notion of rehabilitation in our sentencing system and seek to move forward with possible changes.

(Opposed) The study in the bill is an important step forward. The SGC is working on a comprehensive review of sentencing, including a possible post-conviction review process. The SGC needs direction and resources. However, the proposed substitute bill, which includes a process for early release of offenders, does not serve the overriding goal of a sentencing review process. The proposed substitute bill will make the system more complex by adding yet another review board.

Crime is not a private matter. When someone commits an offense, it is an offense against the people of the State of Washington. When the state is balancing interests, it is important to keep this in mind. Certainly some offenders may reach a point in their sentence where they are no longer a danger, and a review process may be appropriate. But, there are some offenses that are so bad that society defines them by punishment. This may be rare, but it still matters.

A review process should include local input and interests, especially from the communities affected by the original crime. A review process should not include a presumption of release, and it should be narrowly tailored for those who earn it.

(Other) The committee should pass the proposed substitute bill. The proposed substitute bill creates a process for persons who have been incarcerated for 20 years or longer to seek a review and possibly be released. The bill does not automatically release anyone. The community review board can decide not to let someone out of prison. The proponents of this bill understand the need to strike an appropriate balance. Many proponents, including prisoners and their families, have also been victims of violent crime. Victims' voices should be heard. Some offenders should not be let out of prison.

The proposed substitute bill is not a free-for-all to get out of prison. Instead, the proposed substitute bill represents a hope for a second chance. The proposed substitute bill creates a review process that could allow some rehabilitated offenders to leave prison and contribute to

their communities. Studies show that risk to reoffend is at its lowest in 15 years, after which incarceration no longer has a positive effect. Our sentencing laws should take this into consideration, and there should be a review process for certain offenders.

When someone is incarcerated, it affects their families and their entire community. A prisoner cannot support his or her family, leaving a widening economic impact. The state should consider the total impact of incarceration, including on families, rather than just the individual inmate. The clock is ticking for children, families, and businesses.

Many people serving long sentences are in prison as a result of decisions made in their teenage years. They are not the same people anymore. They are mature, educated, and skilled people, worthy of an opportunity to contribute to their communities. Human beings are capable of change, and the system should have space for rehabilitation and forgiveness. People in prison should be able to prove to society that they have changed.

Crime and incarceration are complex problems, and Washington needs to do a better job in addressing them. There needs to be hope for those who are rehabilitated and who could become productive members of society. The state cannot take sentencing or any changes to it lightly, nor can its citizenry expect magic formulas to rectify the problems. However, it is absolutely necessary to craft better solutions than what exist currently.

**Persons Testifying:** (In support) Representative Jinkins, prime sponsor.

(Opposed) Russ Hauge, Sentencing Guidelines Commission.

(Other) Xochitl Maykovich, Washington Community Network; Joy Nash; Kendra Wynn; Rosemary Maxwell; TeNeishia Studds; Sabre Akles; and Zachary Kinneman.

**Persons Signed In To Testify But Not Testifying:** None.

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The fourth substitute bill be substituted therefor and the fourth substitute bill do pass and do not pass the substitute bill by Committee on Public Safety. Signed by 32 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Chandler, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Bergquist, Buys, Caldier, Cody, Condotta, Fitzgibbon, Graves, Haler, Hansen, Harris, Hudgins, Jinkins, Kagi, Lytton, Manweller, Pettigrew, Pollet, Sawyer, Schmick, Senn, Stanford, Sullivan, Taylor, Tharinger, Vick, Volz and Wilcox.

**Staff:** Rachele Harris (786-7137).

### **Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Public Safety:**

The fourth substitute bill retains all elements of the third substitute and adds to the goals of the review of the Sentencing Reform Act to ensure Washington's sentencing laws and

practices promote public safety by holding offenders accountable for their actions while also facilitating their successful reintegration into the community.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on February 3, 2018.

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

**Staff Summary of Public Testimony:**

(In support) It has been almost 30 years since current sentencing guidelines were adopted. Sentences have been added and altered over the years, and it's not clear that the sentences themselves have internal consistency. A comprehensive review of sentences is welcome and needed in this state.

(Opposed) None.

(Other) There is no reference in the bill to any priorities of public safety or reducing recidivism. This is probably unintended but language should be added to make sure these things are prioritized.

**Persons Testifying:** (In support) Representative Jenkins, prime sponsor.

(Other) James McMahan, Washington Association of Sheriffs and Police Chiefs.

**Persons Signed In To Testify But Not Testifying:** None.