

# SENATE BILL REPORT

## 2SHB 1789

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As of April 1, 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:** Passed House: 3/03/17, 77-20.

**Committee Activity:** Law & Justice: 3/15/17, 3/29/17 [DPA-WM].

**Ways & Means:** 3/31/17.

### Brief Summary of Amended Bill

- Requires the Sentencing Guidelines Commission to contract with a consultant to study sentencing laws and practices and make recommendations to the Legislature and the Joint Legislative Task Force on Criminal Sentencing.
- Establishes the Joint Legislative Task Force on Criminal Sentencing to review the consultant's evaluation and make recommendations for simplification of the Sentencing Reform Act.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel, Darneille, Frockt and Wilson.

**Staff:** Shani Bauer (786-7468)

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### SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Travis Sugarman (786-7446)

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*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.*

**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 standard sentence range provided in statute, which is calculated based on the statutorily designated seriousness level for the offense and the offender's criminal history score based on the offender's past convictions.

In addition to the standard range, other factors may affect the sentence, including: sentencing enhancements; exceptional sentences; consecutive/concurrent sentences; whether the offender qualifies as a persistent offender under the Three Strikes or Two Strikes laws; and alternative sentences.

**Sentencing Guidelines Commission (SGC).** The 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.

If specific funding for the purposes of this act is not provided by June 30, 2017, this act is null and void.

**Summary of Amended Bill:** Subject to appropriation, no later than 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:

- a review of the SRA and any changes made to the SRA since that time;
- recommendations regarding how sentencing laws in Washington can be simplified without risking public safety; and
- recommendations for establishing an ongoing review of sentencing laws and practices.

The consultant must submit a report to the SGC, the Joint Legislative Task Force on Criminal Sentencing, the appropriate committees of the Legislature, and the Governor by September 1, 2018.

A Joint Legislative Task Force on Criminal Sentencing (Task Force) is established. The Task Force must consist of four members of the Legislature and representatives from the:

- Washington Association of Sheriffs and Police Chiefs;
- Washington State Patrol;
- Caseload Forecast Council;
- Washington Association of Prosecuting Attorneys;
- Washington Association of Criminal Defense Attorneys/WA Defender Association;
- WA State Association of Counties;
- Office of the Attorney General;
- American Civil Liberties Union;
- Sentencing Guidelines Commission;
- Department of Corrections;
- Superior Court Judges Association; and
- Administrative Office of the Courts.

The Task Force must review the study and recommendations from the external consultant and make recommendations regarding how the Sentencing Reform Act of 1981 can be simplified.

The Task Force shall submit a report to the Governor and the appropriate committees of the Legislature by December 1, 2019.

**EFFECT OF LAW & JUSTICE COMMITTEE AMENDMENT(S):**

- Removes tasks outlined for review by the external consultant and limits the consultant's evaluation to include a review of the Sentencing Reform Act of 1981 and any changes since that time, recommendations for how the SRA can be simplified without risking public safety, and recommendations for establishing an ongoing review of the sentencing laws and practices.
- Requires the consultant's evaluation to be submitted to a joint task force on criminal sentencing.
- Establishes a Joint Legislative Task Force on criminal sentencing to review the consultant's evaluation and make recommendations for simplification of the SRA.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** Yes.

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

**Staff Summary of Public Testimony on Second Substitute House Bill (Law & Justice):**

*The committee recommended a different version of the bill than what was heard.* PRO: This bill started out much bigger, reinstating a form of parole for individuals with extremely long sentences. A lot more science is available now than it was in 1981 when the SRA was passed. It seems the appropriate time to develop a roadmap as to whether the SRA and the changes since that time still make sense. Every solution seems to bring a new problem. An independent evaluation would be a good start.

There have been nearly 200 amendments to the SRA since it was adopted 40 years ago that have essentially reversed the original intent of the act. Washington has gone from a prison population of 7,000 to 20,000. We need to determine exactly where we went wrong and get an evaluation to ensure that we have one standard form of sentences. Ideas have been generated over time and resulted in a piecemeal approach with no analysis to determine whether it makes sense in the context of the SRA. The SRA is a house that has been built over time with no cohesive plan. It does not make sense as a whole. This is a good opportunity to step back and look at how sentences relate to each other. There is a great deal of research and we are privileged to have the assistance of the Washington State Institute for Public Policy. We need to look at what makes sense considering cost effectiveness, reduced recidivism, public safety, and just desserts.

The SRA was originally designed to eliminate discretion to address racial disproportionality. We need to reevaluate judicial discretion to see if we can't give the judge more ability to

match a sentencing with the particular facts of the case. However, we know that when you increase judicial discretion, racial disproportionality increases. There needs to be a careful balance.

There is a consensus at this time that the SRA needs to be reviewed. In an ideal world, any changes to the SRA would go through a body like the SGC to determine whether it makes sense within the context of the SGC. That is not how the system works and the Legislature needs to be free to make changes to the sentencing system. There are a couple of suggestions out there as to how a review should be completed. The blue ribbon committee mirrors the membership of the SGC and limits the scope of the review. This bill focuses on an outside consultant. Utilizing an outside consultant runs the risk that the recommendations will not be embraced by stakeholders. The SGC is the appropriate forum to take on this task.

**Persons Testifying (Law & Justice):** PRO: Representative Laurie Jenkins; Gerald Hankerson, NAACP; Bob Cooper, WA Association of Criminal Defense Lawyers and WA Defenders' Association; Russ Hauge, Sentencing Guidelines Commission.

**Persons Signed In To Testify But Not Testifying (Law & Justice):** No one.

**Staff Summary of Public Testimony (Ways & Means):** PRO: This is like the Winchester house, the widow of the inventor of the rifle was told that if she kept making the house bigger, she would never die. So she continued to make additions without any vision of the base. That is what has happened to the SRA since 1981. Over 200 changes have been made but now look at what all the changes have done to the overall policy. Keep the bill moving forward but would like to see the dates changed to make things happen sooner. There are too many life sentences that started when people were 19 years of age; they may have been rehabilitated, but there is no option. A study is not enough, there needs to be a look at disparities and disproportionalities caused by the SRA. "We need to lock up people we are afraid of not those that we are mad at."

**Persons Testifying (Ways & Means):** PRO: Bob Cooper, WA Association of Criminal Defense Lawyers & WA Defender Association; Xochitl (So-chi) Maykovich, Washington Community Action Network; Gerald Hankerson, NAACP; Zachary Kinneman, citizen.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.