

# SENATE BILL REPORT

## SB 5692

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As of February 3, 2022

**Title:** An act relating to programming at the department of corrections.

**Brief Description:** Concerning programming at the department of corrections.

**Sponsors:** Senators Gildon, Honeyford, Randall, Rivers and Wagoner.

**Brief History:**

**Committee Activity:** Human Services, Reentry & Rehabilitation: 1/14/22, 1/21/22 [DPS-WM].

Ways & Means: 2/03/22.

**Brief Summary of First Substitute Bill**

- Requires the Washington State Institute for Public Policy to evaluate certain programs at the Department of Corrections (DOC) and submit a report to the Legislature and Washington State Sentencing Guidelines Commission (SGC).
- Requires SGC to develop and recommend a supplemental formula for awarding earned early release time to individuals who complete certain DOC programming and submit a report to the Governor and Legislature.

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**SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION**

**Majority Report:** That Substitute Senate Bill No. 5692 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Wilson, C., Chair; Nguyen, Vice Chair; Gildon, Ranking Member; Dozier, McCune, Saldaña and Trudeau.

**Staff:** Kelsey-anne Fung (786-7479)

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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 part of the legislation nor does it constitute a statement of legislative intent.*

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## SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Sarian Scott (786-7729)

**Background:** Washington State Institute for Public Policy. The Legislature created the Washington State Institute for Public Policy (WSIPP) in 1983. WSIPP is governed by a board of directors representing the Legislature, the Governor, and public universities. WSIPP carries out practical, non-partisan research and analysis at the direction of the Legislature or the board of directors. Since the 1990s, the Legislature has directed WSIPP to identify evidence-based policies with the goal of providing Washington's policymakers and budget writers with a list of well-researched public policies that can, with a high degree of certainty, lead to better statewide outcomes coupled with a more efficient use of taxpayer dollars.

In 2013, the Legislature passed legislation to facilitate the use of evidence-based programs in adult corrections. WSIPP was directed to define evidence-based and research-based, and create an inventory of adult corrections programs classified as evidence-based or research-based. WSIPP produced the first inventory of evidence-based and research-based programs for adult corrections in 2013. The most recent update was published in February 2018 and includes 57 programs.

Reentry Community Services Program at the Department of Corrections. Legislation passed during the 2021 session requires WSIPP to update its previous evaluations of the Reentry Community Services Program (RCS), formerly known as the Offender Reentry Community Services Program, and broaden its cost-benefit analysis to include impacts on the use of public services. WSIPP was also directed to assist with other research questions such as the potential cost, benefit, and risks involved in expanding or replicating the RCS program, and what modifications to the program are most likely to be advantageous. WSIPP must provide a preliminary report by July 1, 2022, and a final report by November 1, 2023, to the Governor and relevant committees of the Legislature.

Correctional Postsecondary Education Program at the Department of Corrections. Legislation passed during the 2021 session requires WSIPP to study enrollment, completion, and recidivism rates of incarcerated individuals in the postsecondary education system post-release. The goal is to understand whether participation in postsecondary education while incarcerated contributes to greater enrollment and completion of postsecondary education and reduced recidivism post-release. WSIPP must provide a preliminary report by October 1, 2024, and a final report by October 1, 2027, to the appropriate committees of the Legislature.

Sentencing Guidelines Commission. The Sentencing Guidelines Commission (SGC) serves to advise the Governor and the Legislature as necessary on issues relating to adult and juvenile sentencing. The mission of the SGC is to promote accountability and equity in adult and juvenile sentencing, provide accurate and timely information about sentencing,

and recommend improvements in the criminal justice system. The SGC consists of 20 voting members. Aside from ex officio members, voting members are appointed to three-year terms by the Governor and are subject to confirmation by the Senate. In making appointments, the Governor must endeavor to assure that the SGC membership includes adequate representation and expertise relating to both the adult criminal justice system and the juvenile justice system.

The SGC's voting membership includes:

- the head of the state agency having general responsibility for adult correctional programs, as an ex officio member;
- the Director of Financial Management, or a designee, as an ex officio member;
- the Chair of the Indeterminate Sentence Review Board, as an ex officio member;
- the head of the state agency, or designee, having responsibility for juvenile corrections programs, as an ex officio member;
- two prosecuting attorneys;
- two attorneys with particular expertise in defense work;
- four superior court judges;
- a chief law enforcement officer of a city or county;
- four members of the public who are not prosecutors, defense attorneys, judges, or law enforcement officers, one of whom is a victim of crime or a crime victims' advocate;
- an elected official of a county government, other than a prosecuting attorney or sheriff;
- an elected official of a city government; and
- an administrator of juvenile court services.

The SGC also includes four Legislators serving two-year terms as nonvoting members, one from each of the two largest caucuses in each chamber.

Early Release Time. Generally, an incarcerated person's sentence may be reduced by earned release time, which is earned through good behavior and good performance, as determined by the correctional agency with jurisdiction over the person. The amount that a sentence may be reduced by earned release time depends on various factors, including the date of the offense and the underlying offense. Certain sentences or portions of sentences are not eligible for earned release time. Per DOC policy, an incarcerated person may also receive earned time sentence reduction for participating or attempting to participate in facility work, education, or training programs, subject to certain exceptions.

**Summary of Bill (First Substitute):** WSIPP must prepare an evaluation of the top five programs at DOC with the highest participation rates that are classified by WSIPP as evidence-based. This is in addition to the Reentry Community Services Program at DOC. The correctional postsecondary education program at DOC may not be included as one of the five programs.

For each program identified by WSIPP, the evaluation must analyze the program's effectiveness, availability and accessibility of the program across the prisons, and impact on recidivism. The evaluation must also identify whether eligibility for the program excludes participation for reasons unrelated to discipline or safety. WSIPP must submit a report on the five program evaluations, in addition to the evaluation on the Reentry Community Services Program, to the Legislature and the SGC by December 1, 2023.

SGC must develop and recommend a formula for awarding earned early release time that supplements and complements the earned early release time framework in current law to individuals who complete DOC programming recognized by the WSIPP program evaluations as having a positive, demonstrable impact on recidivism. SGC must also identify which offenses, if any, would be ineligible for the formula. SGC must report its findings and formula recommendations to the Governor and appropriate committees of the Legislature by September 1, 2024.

The act expires June 30, 2025.

**EFFECT OF CHANGES MADE BY HUMAN SERVICES, REENTRY & REHABILITATION COMMITTEE (First Substitute):**

- Substitutes the Sentencing Guidelines Commission for the Criminal Sentencing Task Force as the entity responsible for developing and recommending the earned early release time formula for programming.
- Clarifies that the earned early release time formula for programming should supplement and complement the existing earned early release time framework in current law.
- Requires the program evaluation to analyze the availability and accessibility of programs across the prisons, in addition to program effectiveness and impact on recidivism, and identify whether eligibility for the program excludes participation for reasons unrelated to discipline or safety.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony on Original Bill (Human Services, Reentry & Rehabilitation):** *The committee recommended a different version of the bill than what was heard.* PRO: This bill improves public safety by positively changing lives, which supports DOC's mission and their priority on successful reentry. The Legislature should be able to make informed, evidence-based decisions based on current data so it can direct money to

programs that work. If an incarcerated person takes it upon themselves to aggressively go through a rehabilitation program, and those programs actually contribute to reduce recidivism, the person should be rewarded. Incarcerated persons should have evidence-based programming to have the best possible results upon release and ensure those in state institutions have the knowledge, skills, and abilities they need to live successful, law abiding lives. This bill promotes redemption and second chances.

In order for DOC to live up to its values, effective programs need to be prioritized. This will begin the process of identifying where funding is being allocated, who is participating, and who is excluded. Having evidence-based programming involved in earned time calculations has the potential of positively impacting incarcerated persons and the community.

CON: There are concerns that the bill may restrict access to good time. Tying earned early release time to certain programming may be unfair because DOC programs vary by facility and most DOC programs are not available to 50 percent or more of inmates. Tying earned release time to certain programs will make the current problem worse. There should not be offenses ineligible for earned time under the bill. All offenses should be eligible.

OTHER: There are concerns about equitable access to and availability of programming. Not every prison offers the same recidivism reduction programming, and instead the study should focus on identifying gaps to ensure each facility has equitable offerings. Otherwise, earned time will be awarded based on what facility the person is at. Further, not everyone in custody is eligible for certain programming, and this could lead to inequities in earning good time.

DOC is also very restrictive about who participates in programming, which may be based on infraction history and sentence length. Because losing good time is easy in prison, the earned time under the formula should be supplemental and not take away what incarcerated individuals already get.

**Persons Testifying (Human Services, Reentry & Rehabilitation):** PRO: Senator Chris Gildon, Prime Sponsor; Davina Kerrelola, FOTi; Kehaulani Walker.

CON: David Trieweler, Washington Association of Criminal Defense Lawyers.

OTHER: Antonio Ginatta, Columbia Legal Services; James Chambers.

**Persons Signed In To Testify But Not Testifying (Human Services, Reentry & Rehabilitation):** No one.

**Staff Summary of Public Testimony on First Substitute (Ways & Means):** PRO: Have to bump this timeline back to 2025 due to WSIPP caseload. Looks at top five programs and evaluates their effectiveness at reducing recidivism. Potentially, coming back later to reward completion of programs that are known to reduce recidivism with supplemental

earned time release.

OTHER: Love the continued support for correctional education. Applaud evidence based programs for release. Concerned that post-secondary education is excluded. Concerned about accessibility and equitability of participation. Limited amount of space to participate.

**Persons Testifying (Ways & Means):** PRO: Senator Chris Gildon, Prime Sponsor.

OTHER: Patricia (Pat) Seibert-Love, State Board for Community and Technical Colleges and Statewide Reentry Council.

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