

# SENATE BILL REPORT

## HB 1380

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As Passed Senate, April 16, 2019

**Title:** An act relating to providing an aggravating circumstance for assault against a utility worker.

**Brief Description:** Providing an aggravating circumstance for assault against a utility worker.

**Sponsors:** Representatives Pellicciotti, Goodman, Pettigrew, Chapman, Ormsby, Reeves and Macri.

**Brief History:** Passed House: 3/01/19, 95-0.

**Committee Activity:** Law & Justice: 3/14/19, 3/21/19 [DP].

**Floor Activity:**

Passed Senate: 4/16/19, 47-1.

### Brief Summary of Bill

- Adds assault of a utility worker performing official duties to the list of aggravating factors supporting a sentence above the standard sentencing range.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Kuderer and Salomon.

**Staff:** Melissa Burke-Cain (786-7755)

**Background:** Sentencing Reform Act. In 1981, the Legislature enacted the Sentencing Reform Act, establishing the Sentencing Guidelines Commission and directing the commission to recommend a determinate sentencing system for adult felonies. The sentencing guidelines system ensures offenders who commit similar crimes and have similar criminal histories receive equivalent sentences. Sentences are determined by the seriousness of the offense and by the criminal record of the offender. The guidelines use a sentencing grid to identify a sentencing range for each felony. In specific circumstances, a judge may impose a sentence outside the standard sentencing range for conviction of the crime if there

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are compelling reasons justifying an exceptional sentence considering statutory, mitigating, or aggravating factors.

Sentencing Based on an Aggravating Factor. A judge may impose a sentence above the standard range based on an aggravating factor. The state must prove the facts supporting an aggravating factor, other than the fact of a prior conviction, to a jury beyond a reasonable doubt. The jury's verdict on the aggravating factor must be unanimous. If the defendant waives a jury, proof of facts supporting an aggravating factor must be to the court beyond a reasonable doubt, unless the defendant stipulates to the facts supporting the aggravating factor. When a court imposes a sentence outside the standard range, it must set forth the reasons for its decision in written findings of fact and conclusions of law.

**Summary of Bill:** A court may consider a sentence above the standard sentencing range for an assault based on an aggravating factor when the assault victim is a public or private utility worker performing official duties. Official duties include: (1) maintenance and repair work on utility poles, lines, conduits, pipes, or other infrastructure; or (2) connecting, disconnecting or recording utility meters.

**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:** PRO: The reason for an enhancement is that assaults on utility works potentially disrupts the larger utility grid. Individuals are being assaulted while trying to restore utility services. The sentence enhancement is justified in light of the larger impact on society through the loss of utility services. Electrical work outside is dangerous even before accounting for bad weather, challenging terrain, uncontrolled animals, and other risks. Linemen in rural and urban settings have dogs set upon them, guns drawn on them, shots taken at them, and have been threatened with baseball bats. For those who are electricity first responders, whose motto is "day or night, first on the site" they work in very bad weather, and at all hours, to remove trees from power lines. Despite having trucks with flashing lights and a spotlight, badges, and vests, utility workers are confronted by landowners and threatened or assaulted. We respect private property, we give notice when we can, but we may be working at 2:00 am or the location of the outage is on the property of another utility's customers. There is overlap among power companies. For line workers and meter readers, who often work alone, they may be confronted by angry people who have lost power or are delayed on the road because of utility work.

CON: The measure causes concern because it addresses the risk to utility workers, but does not address anything that could be done to reduce the risk by informing customers or notifying them of the work either by phone or mail. We should look at other strategies to reduce the risk of harm besides more mass incarceration. A sentence enhancement based on a victim's employment does not fit with the other sentence enhancements in the law. The approach could lead to sentence enhancement for any type of employment.

**Persons Testifying:** PRO: Representative Mike Pellicciotti, Prime Sponsor; Cliff Sears, Grant PUD; Sean Bagsby, Political Director, International Brotherhood of Electrical Workers Local 77; Rick Luiten, Lineman, International Brotherhood of Electrical Workers Local 77; Karl Freudenstein, Serviceman, International Brotherhood of Electrical Workers Local 77.

CON: Alex Hur, Washington Defender Association and Washington Association of Criminal Defense Lawyers; Eric Gonzalez, ACLU—Washington.

**Persons Signed In To Testify But Not Testifying:** No one.