

SENATE BILL REPORT

2SHB 1789

As of March 15, 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.

Brief Summary of Bill

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

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Shani Bauer (786-7468)

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.

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.

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 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 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 SRA 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. The recommendations must include 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.

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: 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: 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: No one.