

HOUSE BILL REPORT

ESSB 5121

As Reported by House Committee On:

Public Safety
Appropriations

Title: An act relating to expanding eligibility for the graduated reentry program.

Brief Description: Expanding eligibility for the graduated reentry program.

Sponsors: Senate Committee on Human Services, Reentry & Rehabilitation (originally sponsored by Senators Darneille, Das, Dhingra, Hasegawa, Mullet, Nguyen and Wilson, C.; by request of Department of Corrections).

Brief History:

Committee Activity:

Public Safety: 3/16/21, 3/25/21 [DPA];
Appropriations: 3/31/21, 4/1/21 [DPA(PS)].

**Brief Summary of Engrossed Substitute Bill
(As Amended By Committee)**

- Modifies the maximum length of participation and minimum total confinement requirements for the Department of Corrections' Graduated Reentry Program based on the nature of the offense committed by an individual.
- Requires the Department of Corrections to publish a monthly report on its website and submit an annual report to the Legislature with the number of individuals who were transferred to home detention as part of the Graduated Reentry Program.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: Do pass as amended. Signed by 8 members: Representatives Goodman, Chair; Johnson, J., Vice Chair; Davis, Hackney, Lovick, Orwall, Ramos and

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.

Simmons.

Minority Report: Do not pass. Signed by 3 members: Representatives Mosbrucker, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Graham.

Minority Report: Without recommendation. Signed by 2 members: Representatives Griffey and Young.

Staff: Corey Patton (786-7388).

Background:

An individual serving a term of confinement as total confinement at a state correctional facility may serve up to the final six months of the term in partial confinement as home detention through the Graduated Reentry Program (program) operated by the Department of Corrections (DOC). An individual may only participate in the program if:

- the individual has served at least 12 months of the term of confinement in total confinement at a state correctional facility;
- the DOC determines that the program is an appropriate placement for the individual; and
- the individual provides an approved residence and living arrangement prior to transfer to home detention.

While an individual is participating in the program, the DOC must:

- assist the individual with transitioning from confinement to the community;
- require the individual to be on electronic home monitoring;
- require the individual to participate in programming and treatment based on the individual's assessed need; and
- assign a community corrections officer who will monitor the individual's compliance.

The DOC may issue rental vouchers to a program participant for up to six months if an approved address cannot be obtained without the assistance of a voucher. The DOC may return a program participant to total confinement for any reason, including the participant's noncompliance with any sentence requirement. In administering the program, the DOC is performing a quasi-judicial function. The DOC is not liable for the acts of a program participant unless the DOC acts with willful and wanton disregard.

Under certain conditions, an individual may not qualify for transfer to partial confinement programs such as the Graduated Reentry Program. For example, an individual serving a sentence that includes mandatory minimums or sentencing enhancements may be required to serve all or a greater portion of the term of confinement in total confinement.

"Partial confinement" is confinement for up to one year in a facility operated or contracted by the state or other unit of government, or in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial

confinement may include work release, home detention, work crew, or electronic monitoring.

"Total confinement" is confinement inside the physical boundaries of a state facility or institution for 24 hours a day.

Summary of Amended Bill:

The maximum length of participation and minimum total confinement requirements for the Graduated Reentry Program (program) operated by the Department of Corrections (DOC) are modified to impose different restrictions based on the nature of the offense committed by an individual as follows:

- An individual serving a term of confinement as total confinement at a state correctional facility for an offense other than a sex offense, a violent offense, or a crime against persons, may serve up to the final 18 months of the term in partial confinement as home detention through the program if the individual has served at least four months in total confinement and is not subject to a deportation order or the jurisdiction of the Indeterminate Sentence Review Board.
- An individual serving a term of confinement as total confinement at a state correctional facility for any other type of offense may serve up to the final five months of the term in partial confinement as home detention through the program if the individual has served at least six months in total confinement and the individual is not subject to a deportation order, civil commitment, or the Interstate Compact for Adult Offender Supervision.

The modifications to the program apply prospectively and retroactively to any individual currently serving a sentence in any facility or institution either operated by the state or utilized under contract.

The DOC must publish a monthly report on its website with the number of individuals who were transferred during the month to home detention as part of the program. The DOC must submit an annual report by December 1 to the appropriate committees of the Legislature with the number of individuals who were transferred to home detention as part of the program during the prior year.

Amended Bill Compared to Engrossed Substitute Bill:

The amended bill allows an individual who has served at least four months in total confinement for an offense other than a sex offense, a violent offense, or a crime against persons, to serve no more than the final 18 months of the individual's term of confinement, rather than the remaining portion, in partial confinement as part of the graduated reentry program.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 26, 2021.

Effective Date of Amended 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) The Graduated Reentry Program (program) smooths the transition that occurs at the end of incarceration by offering more options to support successful community reentry. Structured transition opportunities improve public safety, maintain accountability, and provide rehabilitative services designed to break the cycle of incarceration. Program participants do not have reduced sentences; rather, participants spend some amount of time in total incarceration and then spend some time under community supervision with electronic home monitoring. The program offers intensive case management and requires participants to engage in treatment or programming based on their assessed needs, including mental health treatment, substance abuse treatment, cognitive behavioral interventions, life skill classes, education, and job training. To date, only 0.8 percent of individuals who have completed the program have recidivated.

This bill expands the program to allow participation by individuals who would otherwise be released from prison without receiving any supervision or resources. The reforms in this bill must be applied retrospectively in order to address disparities within Washington prisons.

(Opposed) One of the core tenants of the program is the requirement that program participants must spend at least 12 months in total confinement at an institution. This bill implements broad sweeping changes that will result in some offenders only serving four months in total confinement before being allowed to spend years in the community. The Legislature should consider the types of offenses that are covered by this bill and what the impacts might be.

(Other) People who commit certain offenses, like property offenses, should have the opportunity to participate in the program. At some point, prolonged supervision becomes less effective. There needs to be a limit on the length of time an individual can be in the program. Without a limit, there is a perverse incentive where an individual with a higher offender score may spend more of his or her sentence in the community through the program.

Persons Testifying: (In support) Senator Darneille, prime sponsor; Sarah Willman; Danielle Armbruster and Mac Pevey, Reentry Division, Department of Corrections; Davina Kerrelola, E.I.G.H.T. Foundation and FOTi; and Kehaulani Walker, Julie Modun, and Michelle Mason, FOTi.

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

(Other) Russell Brown, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Public Safety. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Johnson, J., Lekanoff, Pollet, Ryu, Senn, Springer, Stonier, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 14 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Caldier, Chandler, Dye, Harris, Hoff, Jacobsen, Rude, Schmick and Steele.

Staff: Yvonne Walker (786-7841).

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

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended 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) None.

(Opposed) The flaw in this bill is that it allows an individual to spend less time in prison than a person would on a local sentence. It creates circumstances where a person would get lesser incarceration time for a higher ranked felony offense than another person would get for a lower ranked criminal offense. A local sentence is required to be up to 12 months, while a prison sentence does not begin until after a person receives a sentence of 12 months plus one day of incarceration. As a result, this bill sets up a situation where a person who only has a few crimes in their history is incentivized to commit more crime so that they can

get less time in the Department of Corrections. This does not make sense and it does not serve the interest of public safety. It is recommended that incarcerated individuals should have to serve at least 12 months of incarceration and up to the final 12 months of their term on the Graduated Reentry Program. This is an issue that will end up being sent to the Criminal Sentencing Task Force to review in the future.

Persons Testifying: James McMahan, Washington Association of Sheriffs and Police Chiefs; and Russell Brown, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.