
State Government & Tribal Relations Committee

HB 1147

Brief Description: Supporting civic engagement for incarcerated and institutionalized individuals in state custody to promote inclusion and rehabilitation.

Sponsors: Representatives Farivar, Simmons, Ryu, Ramel, Mena, Macri, Doglio, Goodman, Ormsby and Hill.

Brief Summary of Bill

- Establishes a right to civic engagement for individuals who are incarcerated or receiving treatment at certain institutions.
- Prohibits agencies from imposing a substantial burden on an individual's exercise of civic engagement rights.
- Allows a person whose civic engagement rights are violated to bring a civil action to enjoin further violations and recover damages.
- Permits courts to increase damage awards up to a certain amount.

Hearing Date: 1/15/25

Staff: Connor Schiff (786-7093).

Background:

First Amendment Protections for Individuals who are Incarcerated or Civilly Committed.

The United States Supreme Court (Supreme Court) has held that some rights under the First Amendment, including freedom of speech and freedom of association, are necessarily restricted for individuals who are incarcerated due to the nature of the prison environment.

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.

For communication and association between individuals who are incarcerated, the Supreme Court held that a regulation impinging on intra-prison communication is valid if it is reasonably related to a legitimate penological interest. "Legitimate penological interests" include interest in preserving order and authority and deterrence of future crime. Several federal courts have interpreted that this standard of review also applies to the First Amendment rights of sex offenders who are civilly committed.

The Supreme Court provides a different standard for communication between individuals who are incarcerated and the public. A prison's regulations or practices restricting the public's access to speech from incarcerated individuals must:

- further an important or substantial government interest unrelated to the suppression of expression; and
- must be no greater than is necessary or essential to the protection of the particular governmental interest involved.

In some instances, the federal government has explicitly granted additional protection for certain First Amendment rights for individuals who are incarcerated or institutionalized. For example, the Religious Land Use and Institutionalized Persons Act prohibits the government from imposing a substantial burden on the religious exercise of a person residing in or confined to a prison or other government institution unless the government demonstrates that the burden:

- is in furtherance of a compelling government interest; and
- is the least restrictive means of furthering that compelling governmental interest.

Voter Eligibility.

Individuals who are serving a sentence of total confinement for a felony conviction in a Department of Corrections facility are ineligible to vote.

Sentencing Reform Act of 1981.

The Sentencing Reform Act of 1981 (Sentencing Reform Act) developed a system for the sentencing of felony offenders which structures discretionary decisions affecting sentences. The Sentencing Reform Act has the following purposes:

- ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
- promote respect for the law by providing punishment which is just;
- be commensurate with the punishment imposed on others committing similar offenses;
- protect the public;
- offer the offender an opportunity to improve himself or herself;
- make frugal use of the state's and local governments' resources; and
- reduce the risk of reoffending by offenders in the community.

The Department of Social and Health Services Facilities.

The Department of Social and Health Services (DSHS) operates three state hospitals for psychiatric treatment: Western State Hospital, Eastern State Hospital, and the Child Study and

Treatment Center. The Child Study and Treatment Center treats minors aged 5 to 17 who are committed or referred for up to six months of inpatient treatment through the Children's Long-Term Inpatient Program, by managed care organizations or behavioral health administrative services organizations, or by the courts. Eastern State Hospital and Western State Hospital treat adult involuntary patients who are either civilly committed for treatment through the Involuntary Treatment Act or forensically committed for treatment related to criminal insanity or competency to stand trial through the criminal courts.

If a person is found to be a sexually violent predator (SVP) by a court, the person is committed to the custody of the DSHS at the Special Commitment Center on McNeil Island. If certain conditions are met, courts may grant unconditional or conditional release of an individual found to be an SVP. A conditional release of an SVP may be to a secure community transition facility (SCTF). The DSHS operates SCTFs on McNeil Island and in King County

Summary of Bill:

Individuals who are currently incarcerated in adult and juvenile prisons, individuals living at residential habilitation centers, and individuals receiving treatment at state hospitals, the Special Commitment Center, secure community transition facilities, and residential treatment facilities operated by the Department of Social and Health Services that provide mental health services have a right to civic engagement. Civic engagement rights include:

- forming political organizations within state institutions;
- organizing and communicating with community groups, organizations, institutions, and elected officials and their staff;
- registering to vote in accordance with state law;
- engaging with political candidates and campaign staff;
- accessing spaces for meetings with community members, organizations, institutions, and government officials;
- participating in teleconference and videoconference proceedings with groups, panels, institutions, and legislative bodies; and
- being free from punishment or retaliation for participating in civic process.

No state or local agency can impose or implement a regulation that imposes a substantial burden on an individual's civic engagement rights. No state or local agency may assert that denying an individual the right to civic engagement serves a legitimate penological interest or a compelling government interest in relation to the purposes promoted by the Legislature under the Sentencing Reform Act of 1981.

If a person's right to civic engagement is violated, the person may bring a civil action in superior court to enjoin further violations and recover damages, including reasonable attorney's fees. The court may increase the damage award to an amount not to exceed three times damages sustained. However, the damage award can not exceed \$25,000.

Appropriation: None.

Fiscal Note: Requested on January 7, 2025.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.