

HB 1384 Which Increases Sentence Lengths for Certain Sex Crimes is Unnecessary and Unwarranted.

The Washington Association of Criminal Defense Lawyers and the Washington Defender Association oppose proposed House Bill 1384. It would increase sentence lengths for certain sex crimes by up to 5 years. However, sentences for these crimes are already extremely long. Consequently, HB 1384 is unnecessary, would not increase public safety, and would exacerbate the scourge of mass incarceration in Washington.

Background

Under Washington's determinate sentencing system, felony offenders are sentenced to incarceration for a fixed term. At the end of that term, they must be released. The length of the term is determined by a sentencing grid that incorporates a crime's seriousness level on one axis and the offender's criminal history on the other axis. The fixed term is actually a range that includes a minimum and maximum length for the sentence. The ranges are almost always below the statutory maximums. The maximum sentence for Class C crimes is 5 years, for Class B is 10 years and for Class A crimes, the maximum is 20 years to life.

For certain serious sex crimes, such as Rape of a Child (ROC) 1 and 2 and Child Molestation (CM) 1, offenders are not sentenced solely under the determinate sentence grid. Instead, they are subject to release from prison by the Indeterminate Sentence Review Board at the end of their minimum term if the Board determines that they are not likely to commit a new sex crime after release. The minimum term is determined by the determinate sentencing grid. However, if the Board finds that the offender is likely to commit a sex crime upon release, it can add up to 5 years to the offender's minimum term before considering release again. This process can be repeated for up to the maximum possible sentence which, for ROC 1, ROC 2, and CM 1 is life.

HB 1384 would increase sentence lengths by increasing seriousness levels for each crime. This has the effect of increasing the standard ranges and thus, the minimum terms that offenders must serve before becoming eligible for release to community custody.

Increasing Sentence Lengths is Unnecessary and Unwarranted

There are several purposes for punishment of criminal offenses: deterrence, public safety, retribution, and rehabilitation. Increasing sentence lengths for these crimes under HB 1384 serves none of them.

The minimum sentences for these offenses are already extremely long. For ROC 1, they range from 8 years to almost 26 years depending on the offender's prior criminal history. For ROC 2, they range from over 6 years to over 23 years. Making these already long sentences even longer does not increase either deterrence or public safety (i.e. a decrease in recidivism or crime rates). See *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. National Research Council, The National Academies Press, (2014) pgs. 155-56.

Increasing these sentences is unnecessary for rehabilitative purposes. Sex offender treatment does not take longer than 6 years to complete. Neither do any of the myriad other programs that the Board likes to see offenders complete before considering them for release. Also, most offenders convicted of ROC 1 and 2 and CM 1 are heavily supervised for life after release and, as a result, are a low risk to reoffend.

While some may argue that retribution alone is sufficient reason for this bill, there is no explanation given for why retribution has required the constant increases in sentence lengths that have occurred in Washington over the last 35 years. In fact, a recent study shows that an emphasis on retribution as the justification for punishment correlates strongly with racial animosity. See *Race and Retribution: An Empirical Study of Implicit Bias and Punishment in America*, Levinson, Smith, and Hioki (2019).

Increasing these sentence lengths for no valid penological purpose runs counter to the recognition over the last several years that we need to imprison fewer people for shorter periods of time, not more people for longer. It runs counter to the findings of many studies, both in Washington and nationally, that the increase in sentenced lengths over the last 35 years have not made us safer and have devastated the families and communities of offenders. Significantly, despite the testimony of some victims in prior legislative hearings, long prison sentences are not desired by most survivors of violent crimes. See *About Time: How Long and Life Sentences Fuel Mass Incarceration in Washington*, Beckett and Evans (Feb. 2020), Executive Summary, pg. 8. Recently, victim organizations around the country, including Washington, criticized the overreliance on incarceration as a response to criminal behavior and expressed regret for their cooperation in perpetuating it. See *Moment of Truth: Statement of Commitment to Black Lives*, (6-30-20) <https://wscadv.org/news/moment-of-truth-statement-of-commitment-to-black-lives>. Lastly, the obsessive focus on retribution that has driven our criminal justice system has almost always been driven by racial hostility. For all these reasons, WACDL/WDA opposes proposed HB 1384.

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