

Dear Rep. Tharinger:

We, the organizations listed below, strongly urge you to support Substitute House Bill 1282. This may be the most progressive and impactful piece of sentencing reform and racial justice legislation you will consider this session.

This one bill will save the State over \$45 million by 2024 and dramatically reduce racial disproportionality in our prison system. SHB 1282 is a common-sense solution that directly attacks the damage that our system of mass incarceration has caused people and communities in Washington. It also promotes public safety by incentivizing participation in positive programming that makes our prisons safer and reentry more successful.

Increasing earned time is good policy and simply returns Washington to the policies in place before the “Tough on Crime” era.

Washington formerly allowed the vast majority of incarcerated people to earn up to 33% earned time. Unfortunately, over the past two decades the length of sentences have increased exponentially in Washington and past legislatures have chipped away at earned time as one part of failed “tough on crime” policies.

As a consequence of these poor legislative decisions, people who are convicted of assault now will likely serve four more years of prison time than they would have received twenty years ago. Due to racial disparities and injustice within the criminal legal system, people of color, especially Black people, often serve longer sentences than white people.

Restoring Washington’s earned time accrual rate to 33% percent for all people would allow people to earn time off their sentence through participation in education, employment, and rehabilitative programming and release more prepared to reenter the community. SHB 1282 reinstates good, cost-effective policy, while actually attacking pernicious racial disparities at their core.

SHB 1282 will increase public safety, reduce complexity, save money and, most importantly, immediately address racial disparities in our prisons.

Research proves that incentivizing people to change through participation in programming reduces the likelihood that someone will return to prison, supports their efforts to reenter their communities, increases public safety and reduces wasteful costs. Evidence-based studies show that people released on earned time are less likely to recidivate than people who are not eligible for earned time. The Department of Corrections strongly supports SHB 1282 because it promotes positive change, provides millions of dollars in savings to the State, and will dramatically reduce the sentencing complexities endemic to the current system.

The Department’s numbers also show that SHB 1282 will result in a marked and lasting decrease in racial disparity within our prison system. Currently Black people make up 18% of DOC’s population; if adopted SHB 1282 will reduce that number to 11% or possibly even lower.

SHB 1282 must be applied retroactively in order to achieve all of these benefits.

The Statewide Criminal Sentencing Taskforce and the Sentencing Guidelines Commission have both recommended increasing earned time. Even prosecutors and law enforcement agree that increasing earned time is good policy.

Nonetheless, while agreeing that everyone in the future should receive increased earned time, opponents argue that no one currently serving a sentence should benefit from increased earned time. In reality, retroactivity is a commonsense and essential element of this bill. Absent retroactive application, SHB 1282 will provide no financial benefit to the State and will do nothing to address the problem of racial disproportionality in our prison system.

Retroactive application will help address the terrible consequences of disparities in the criminal legal system and Washington’s “trial penalty.”

Sentences for all crimes, but particularly for those deemed “violent,” have dramatically increased over the last thirty years. But this increase has been especially acute for sentences handed down after trial. Between 1986 and 2016, the length of criminal sentences arrived at after plea bargains for “violent” crimes increased by 30%; sentences imposed after trial increased by 111% over the same period. In 2016, a person who lost at trial could expect on average to serve 14.5 more years than they would have had they plead guilty.^[1]

As a result of this unfair and coercive system we have created, prosecutors largely dictate the sentences that people receive; this system of mass incarceration has condemned legions of young Black and brown people to become old Black and brown people in prison.

SHB 1282 and its retroactive elements are important steps forward in rebalancing these unfair power dynamics and moving us away from the current, harsh and racialized system of mass incarceration. As David Heppard, a formerly incarcerated person who is now the Executive Director of the Freedom Project, has said “[i]f [SHB 1282] is not retroactive, it is not a racial equity bill.”

“Earned” time is truly earned.

Every day, people held in prison face the danger of being denied earned time because of an infraction for a minor rule violation. In addition to staying out of trouble, people must be dedicated to programming and bettering themselves in order to become eligible for earned time. Under SHB 1282, DOC retains the power to deny earned time due to infractions or a person’s failure to take advantage of educational and programming opportunities, ensuring that earned time is truly an incentive for positive actions and participation.

Earned time allows people who have done the work the opportunity to get out and return to their families and communities. It requires discipline and good behavior, a commitment to walking the straight and narrow. Earned time is hard won and well deserved.

It is for these reasons we strongly urge you and your colleagues to support Substitute House Bill 1282. This important criminal legal reform is timely and necessary.

Sincerely,

American Civil Liberties Union of Washington
Columbia Legal Services
Disability Rights Washington
Friends of The Incarcerated
Free Them All
Freedom Project
King County Department of Public Defense

Quaker Voice on Washington Public Policy
Washington Appellate Project
Washington Association of Criminal Defense Lawyers
Washington Coalition for Prison Reform
Washington Defenders Association
Washington Voices
Yoga Behind Bars

^[1] These statistics and more information about recidivism rates, Washington’s “trial penalty,” and harsh sentencing scheme more generally can be found in Beckett, Katherine & Heather Evans, *About Time: How Long and Life Sentences Fuel Mass Incarceration in Washington State – a Report for ACLU of Washington*, at 39-41 (Feb. 2020), found at <https://www.aclu-wa.org/docs/about-time-how-long-and-life-sentences-fuel-mass-incarceration-washington-state>.