



Legislative
Council Staff

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FISCAL NOTE

Drafting Number:	LLS 18-0297	Date:	January 16, 2018
Prime Sponsors:	Sen. Lundberg	Bill Status:	Senate Judiciary
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Bill Topic: DETERMINATE SENTENCE FOR INDETERMINATE SEX OFFENSE

Summary of Fiscal Impact:

<input type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

This bill grants courts the discretion to choose between an indeterminate sentence or a determinate sentence for certain sex offenders. The bill increases workload for courts to make additional findings for each case. In the future, costs may decrease for the Department of Corrections if the court grants a determinate sentence that results in an offender serving less time in prison.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: The fiscal note reflects the introduced bill, which was recommended by the Sentencing in the Criminal Justice System Interim Study Committee.

Summary of Legislation

Under current law, certain sex offenders must be given an indeterminate sentence with a maximum of the offender's natural life. This bill grants the court discretion to choose between the indeterminate sentence or a determinate sentence for a term of incarceration, probation, or parole. The bill specifies the factors related to punishment and treatment that a court must consider when making its sentencing decision and requires that the court state its reasoning on the record. It also specifies the various ranges of terms of incarceration that the court should use for determinate sentences.

Incarceration terms. In deciding the sentence for a term of incarceration, the court is to consider the presentence investigation sex offender evaluation, relevant evidence, and whether the defendant:

- is presently a high risk to sexually reoffend;
- poses a high risk of sexual recidivism unlikely to change with age or developmental maturity;
- demonstrates ongoing, persistent unlawful sexual behavior where the defendant appears unable to stop himself or herself from sexually reoffending;
- appears unable to live in the community without engaging in illegal sexual behavior;
- is diagnosed as a pedophile or displays a fixed sexual attraction to prepubescent children or other vulnerable populations;

- is uncooperative and unwilling to pursue a lifestyle free from substance abuse that includes appropriate employment if applicable and development of a healthy support system;
- presents risk factors that will be difficult to treat;
- lacks and is unlikely to develop the necessary protective factors that research demonstrates would prevent reoffense; and
- has physical or mental health issues that present an unacceptable threat to victims or potential victims.

Probation terms. In deciding the sentence for a term of probation, the court is to consider whether:

- the defendant is likely to require indefinite monitoring and management to ensure the safety of victims or potential victims;
- the defendant appears able to live in the community but presents needs that are likely to require lifetime support in order to live a stable lifestyle;
- the defendant lacks certain protective factors that would prevent reoffense without the possibility of lifetime supervision from the criminal justice system;
- the age and developmental maturity of the defendant at the time of sentencing indicate the need for the possibility of lifetime supervision; and
- any other relevant factors presented in the presentence evaluation or other related evidence presented to the court merit consideration.

Parole for determinate sentences. If the court sentences the defendant to an indeterminate period of parole and he or she violates a condition of parole, the Parole Board may revoke parole for the remainder of his or her determinate term of incarceration sentence or for a period of incarceration not to exceed 90 days.

Background and Assumptions

Presentence investigations and evaluations are assessments conducted before the sentencing phase of a trial to assist the court in making sentencing decisions. In the past year, about 325 convictions were entered that met the criteria outlined in this bill. According to the Judicial Department, the factors that the court is required to consider for sentencing, as outlined above, are already included by the evaluator in the psychosexual evaluation and presentence investigation. The Judicial Department indicates that the bill is not anticipated to increase the number of offenders sentenced to probation.

State Expenditures

Beginning in FY 2018-19, this bill is likely to increase workload for the trial courts in the Judicial Department. At some point in the future, General Fund costs in the Department of Corrections may decrease. These impacts are discussed below.

Judicial Department. Trial courts will have increased workload to review the list of factors and make additional findings on the record. Based on the assumption that each case may require one additional hour, this workload increase can be accomplished within existing appropriations.

Department of Corrections. Overall, this bill may reduce state General Fund expenditures for the department. To the extent that a court sentences an offender to a determinate sentence and an offender serves less time incarcerated, prison bed costs will be reduced at some point in the future. A portion of these savings will be partially offset by an increase in parole costs. As sentencing decisions are at the discretion of the courts, the fiscal note assumes any required adjustments in appropriations will be requested through the annual budget process.

Effective Date

The bill takes effect August 8, 2018, if the General Assembly adjourns on May 9, 2018, as scheduled, and no referendum petition is filed, and applies to offenses committed on or after this date.

State and Local Government Contacts

Corrections
Judicial

District Attorneys

Information Technology