

# One Hundred Fourth Legislature - Second Session - 2016

## Introducer's Statement of Intent

### LB984

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**Chairperson: Senator Les Seiler**

**Committee: Judiciary**

**Date of Hearing: February 10, 2016**

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

The intent of LB984 is to strike a balance between the interests of prosecutors in the efficient imposition of justice and the interests of the public in the fair and effective administration of justice. The efficient imposition of justice has come to rely on the state's ability to forego draconian sentences in exchange for the defendant waiving constitutionally protected rights and admitting guilt.

Armed with the leverage of habitual criminal provisions and mandatory minimum sentences prosecutors can be very successful in extracting guilty pleas in many cases, but only at the great expense of sentencing overkill in other cases or the outright injustice of arbitrary sentencing rules, which reduce or eliminate judicial discretion. Such sentencing rules result in prison overcrowding and sentences disproportionate to the actual nature of the crime or character of the defendant, not to mention the occasional conviction of an innocent but pragmatic defendant. Defense attorneys likewise find solace and protection from allegations of ineffective assistance of counsel arising out of a failed attempt at trial when the defendant admits guilt in exchange for a plea bargain.

To be sure there are cases where nearly everyone would agree the habitual criminal and minimum mandatory provisions fit the crime and the criminal and are highly useful in protecting the public through prolonged incarceration. Prosecutors further argue that elimination of the habitual criminal provisions and mandatory minimum sentences would cause presumed innocent, but obviously guilty, defendants to "shoot the moon" at trial hoping for some prosecutorial misstep and a Hail Mary acquittal with no downside consequences.

LB984 accommodates all the interests by tempering both the mandatory minimum provisions and the habitual criminal provisions. With regard to mandatory minimum sentences if the sentencing judge determines that imposition of the mandatory minimum sentence would result in penal overkill, and thereupon one or more of two randomly appointed additional judges agree, the minimum mandatory sentence provisions can essentially be disregarded.

Likewise in the case of the sentencing of a defendant where the sentencing judge believes sentencing of the defendant as a habitual criminal is appropriate, the sentencing judge may cause 2 additional judges to be randomly impaneled and, upon their agreement, the defendant sentenced as a habitual criminal.

The net result is maintaining the necessary uncertainties that promote just and efficient guilty pleas while removing the restraints on the common sense exercise of judicial discretion at sentencing.

**Principal Introducer:** \_\_\_\_\_

Senator Paul Schumacher