

HOUSE BILL REPORT

E2SSB 6242

As Passed House:
March 4, 2016

Title: An act relating to the indeterminate sentence review board.

Brief Description: Requiring the indeterminate sentence review board to provide certain notices upon receiving a petition for early release.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators O'Ban, Pedersen, Padden, Roach, Hargrove, Pearson, Darneille, Frockt and Sheldon).

Brief History:

Committee Activity:

Public Safety: 2/23/16, 2/24/16 [DP];

General Government & Information Technology: 2/26/16 [DP].

Floor Activity:

Passed House: 3/4/16, 97-0.

Brief Summary of Engrossed Second Substitute Bill

- Requires the Indeterminate Sentence Review Board to provide certain notices and keep comprehensive meeting minutes when reviewing parole eligible offenders who committed their offenses before July 1, 1984, and early release petitions from certain offenders convicted of crimes as juveniles.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: Do pass. Signed by 9 members: Representatives Goodman, Chair; Orwall, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Griffey, Moscoso, Pettigrew and Wilson.

Staff: Kelly Leonard (786-7147).

HOUSE COMMITTEE ON GENERAL GOVERNMENT & INFORMATION TECHNOLOGY

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass. Signed by 7 members: Representatives Hudgins, Chair; Kuderer, Vice Chair; MacEwen, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Johnson, Morris and Senn.

Staff: Rachelle Harris (786-7137).

Background:

Indeterminate Sentence Review Board. Washington's Indeterminate Sentence Review Board (ISRB) is made up of a chair and three board members appointed by the Governor, and it oversees three different groups of offenders.

First, the ISRB oversees certain sex offenders. The sex offenders supervised within this group committed their offenses after August 31, 2001, and have "indeterminate-plus" sentences rather than the determinate sentences imposed under the Sentencing Reform Act (SRA). The sentencing court sets a minimum and a maximum prison term. After the offender serves the minimum term, the ISRB determines whether the offender will be released from prison. If the ISRB decides against release, a new minimum term is set. If the offender is released, he or she is placed on community custody.

Second, the ISRB oversees offenders who committed their offenses before the enactment of the SRA, July 1, 1984. These offenders have indeterminate sentences. The sentencing court set a maximum term for the offender. The minimum term is subsequently set by the ISRB. If the ISRB determines that an offender may be released from prison before their maximum term of confinement is served, the person is released on parole.

Third, the ISRB oversees certain offenders convicted of crimes as juveniles and sentenced to prison for longer than 20 years. After 20 years, an offender may petition the ISRB for release. If the offender is not released, he or she may petition for release again in five years. If an offender is released, he or she will be placed in community custody for a term determined by the ISRB. The ISRB also oversees offenders convicted of Aggravated Murder in the first degree as juveniles, for which the ISRB automatically reviews sentences after 25 years according to procedures similar to "indeterminate-plus" sentences.

In all three circumstances, the ISRB is required to consider certain factors prescribed in statute when determining whether to release an offender from prison.

Victims' Rights. In 2009 the Legislature expanded the statutory rights of crime victims to include issues related to the ISRB proceedings. Victims, survivors of victims, and witnesses have a right to make a statement that must be considered prior to the ISRB granting release from confinement. The statements may be made in person, by representation, via audio, videotape, or other electronic means, or in writing.

Summary of Bill:

The bill creates requirements regarding reviewing and hearing cases of parole eligible offenders who committed their offenses before the enactment of the SRA, July 1, 1984, and

of early release of offenders convicted of crimes as juveniles and sentenced to prison for longer than 20 years.

Notice and Copies of Records. Upon receipt of a petition for early release or a determination of a parole eligibility, the ISRB must provide notice and a copy of a petition or copies of parole eligibility documents to the sentencing court, prosecuting attorney, and crime victim or surviving family member. The ISRB must provide copies of any assessment, psychological evaluation, institutional behavior record, or other examination of the offender upon request. The notice and related records must be given at least 90 days prior to the review hearing.

All records must be disclosed in full and without redaction. There is a presumption that no records are exempt from disclosure to the sentencing court, prosecuting attorney, and crime victim or surviving family member, in whole or in part. The ISRB may not claim any exemption from disclosure for the records reviewed for an early release petition or parole eligibility review hearing.

Meeting Minutes. The ISRB and its subcommittees must take comprehensive minutes of all meetings and hearings involving any petition for early release or parole eligibility review. The comprehensive minutes should include, but not be limited to: the board members present, the name of the petitioner seeking review, the purpose and date of the meeting or hearing, a listing of documents reviewed, the names of members of the public who testify, a summary of discussion, the motions or other actions taken, and the votes of the ISRB members.

The minutes must be posted on the ISRB website within 30 days of the meeting or hearing, without any information withheld or redacted. Nothing precludes the ISRB from receiving confidential input from a crime victim or surviving family member.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony (Public Safety):

(In support) The ISRB is an important part of the criminal justice system, but it is not a full justice partner because they do not exercise the same type of adherence to due process that every other part of the system does. Usually, for most entities everything is open with plenty of notice and plenty of free exchange of discovery. There is a bit of a culture clash with the ISRB, and they do not live up to the open due process that most are used to seeing. There have been cases where victims did not get a timely notice or did not receive a notice at all. Also victims were not getting information so that they could understand what the issues are when an inmate is up for review. This bill will require the ISRB to give key information to victims and victim's families.

The ISRB used to be a shrinking agency but the Legislature gave them the authority over the indeterminate plus sex offender population and over all murder cases where the person is a juvenile and sentenced to more than 20 years. The goal of this bill is to make sure that there is sufficient notice of the hearings, the information about the offender is shared with all parties, and that victims have a chance for input.

There is a concern about the psychological evaluations being released because the Department of Corrections has stated that those evaluations are important when determining whether to release a person. A psychological evaluation is not a Health Insurance Portability and Accountability Act (HIPAA) protected document. The Office of the Attorney General has agreed with the prosecutors that such evaluations are forensic evaluations used to determine if a person should be released early, and they are not used for purposes of treatment. This bill will ensure that all documents are shared because it is hard to make a decision about a person's release when you are not looking at the most relevant documents.

(Opposed) There may be some information that the bill mandates release of that which might be protected by HIPAA and there may be some personal psychological information in those records. Caution should be taken to ensure that this bill is in line with federal law.

Staff Summary of Public Testimony (General Government & Information Technology):

(In support) On June 12, 1980, Scott Smith and Timothy Pauley murdered three people and left two other women for dead. Smith and Pauley were sentenced prior to the Sentencing Reform Act (SRA), their cases fall under the jurisdiction of the Indeterminate Sentencing Review Board (ISRB). The family's first notification about the case of Scott Smith came very recently after 35 years of almost no contact. The family has had very limited contact from the Department of Corrections (DOC) with regard to Timothy Pauley. The family has to work very hard to obtain ISRB documents and it has to be via public records requests. When documents are received, they are often heavily redacted.

On January 29 three documents were requested from Mr. Pauley's file. On February 3 the ISRB said it would take 33-51 days to receive those documents. The family is waiting on the decision about Mr. Pauley's release, but these requested documents will likely arrive after that timeframe. There is no way to tell what it is that the board is reviewing related to releasing offenders who have hurt your family. It is difficult to do via public records requests because you may not have any idea what specifically to request. Both the pre-Sentencing Reform Act cases and *Miller v. Alabama* are almost all homicides. Prosecutors and victims have had similar experiences regarding records requests. Even though the Prosecutor's Office is a criminal justice agency they still have to make a records request to help inform opinions about the release of a prisoner and often they get the documents after the hearing date. It is not that prosecutors are always opposed to the release of these individuals, they just need access to the requested information to understand what is going on.

The former Secretary of the DOC, Dan Pacholke, was recently asked what is the most important document to understand the release of a prisoner, and he replied that it is critical to read the psychological evaluation. However, frequently the ISRB won't share that information. There is no reason not to provide this information and provide 90-day notice. The Senate removed the requirement to video tape hearings and also reduced the automatic

reporting requirements, both of which will lower the fiscal note. There is already some capacity within the DOC to comply with these requirements. It is important that the release mechanism of prisoners be open and transparent. The psychological evaluation is not considered Health Insurance Portability and Accountability Act protected because it is a forensic evaluation, so it can be released. The DOC's Attorney General Division has released an opinion on this.

(Opposed) None.

Persons Testifying (Public Safety): (In support) Senator O'Ban, prime sponsor; Dan Satterberg, King County Prosecuting Attorney's Office; and Tom McBride, Washington Association of Prosecuting Attorneys.

(Opposed) Bob Cooper, Washington Defender Association and Washington Association of Criminal Defense Lawyers.

Persons Testifying (General Government & Information Technology): Tom McBride, Washington Association of Prosecuting Attorneys; and Angie Dowell.

Persons Signed In To Testify But Not Testifying (Public Safety): None.

Persons Signed In To Testify But Not Testifying (General Government & Information Technology): None.