

HOUSE BILL REPORT

E2SSB 6242

As Reported by House Committee On:
Public Safety

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].

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).

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.

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.

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. New fiscal note requested on February 23, 2016.

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

Staff Summary of Public Testimony:

(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 determinate 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.

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