

# SENATE BILL REPORT

## SB 6530

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As of January 28, 2020

**Title:** An act relating to postconviction review by the clemency and pardons board.

**Brief Description:** Concerning postconviction review by the clemency and pardons board.

**Sponsors:** Senators Dhingra and Wilson, C.

**Brief History:**

**Committee Activity:** Law & Justice: 1/28/20.

**Brief Summary of Bill**

- Authorizes the Clemency and Pardons Board (CPB) to receive petitions and grant early release to offenders in total confinement.
- Authorizes the Governor to revoke any order from the CPB granting early release.
- Expands the CPB from five members to ten and prescribes representation.
- Requires the Department of Corrections (DOC) to supervise offenders granted early release by the CPB and authorizes DOC to return the offender to confinement for community custody violations.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Shani Bauer (786-7468)

**Background:** Determinate Sentencing. In 1981, the Legislature passed the Sentencing Reform Act (SRA), which established determinate sentencing for felony offenders. The SRA eliminated indeterminate sentences and parole in Washington, with some exceptions. Instead, the SRA determines a specific sentence within the statutory maximum. Judges select an offender's sentence within a standard sentence range provided in statute, which is calculated based on the statutorily designated seriousness level for the offense and the offender's criminal history score based on the offender's past convictions.

In addition to the standard range, other factors may affect the sentence, including sentencing enhancements, exceptional sentences, consecutive/concurrent sentences, whether the

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offender qualifies as a persistent offender under the three-strikes or two-strikes laws, and alternative sentences.

Review of Sentences. There are some exceptions to determinate sentencing where certain offenders are eligible for review after serving a certain number of years. The Legislature has given authority to the Indeterminate Sentence Review Board (ISRB) to review and release inmates if the statutory criteria is met for the following three populations:

- parole—offenders convicted before the enactment of the SRA, July 1, 1984;
- Community Custody Board (CCB)—sex offenders who committed their offenses after August 31, 2001, and who have determinate-plus sentences; and
- Juvenile Board Cases (JUVBRD)—offenders who committed crimes under age 18 and were sentenced for terms longer than 20 years.

When determining whether to release a CCB or JUVBRD offender, the ISRB must determine if a preponderance of evidence suggests the offender is more likely than not to commit a new crime. If the ISRB decides to release the offender on supervision, the offender must comply with all release conditions imposed by the court when the person was sentenced as well as any conditions imposed by the ISRB. This person must remain on supervision for three years or the remaining term of the person's sentence. If the person fails to follow conditions of supervision, the ISRB can revoke the release or impose new release conditions on the offender.

Clemency and Pardons Board. The Governor has the constitutional and statutory authority to issue pardons and commute sentences. A pardon is generally a government decision to allow a person to be absolved of guilt for a crime and restores the person's civil rights. A commutation of sentence is a reduction in sentence, usually to time served.

The CPB was established to make recommendations to the Governor concerning petitions for clemency. The CPB consists of five members appointed by the Governor and subject to confirmation by the Senate. The CPB holds regular quarterly meetings, but can call special meetings at other times when appropriate. CPB members are not entitled to compensation.

The CPB is charged with receiving petitions from individuals, organizations, and DOC for the review and reduction of sentences and pardoning of offenders in extraordinary cases. After receiving a petition, the CPB evaluates whether the petitioner's request merits a hearing. If a hearing is determined to be appropriate, the CPB schedules the hearing, at which time it may take testimony from a variety of witnesses, including the petitioner, an attorney for the offender, the prosecuting attorney, and family members of the victim and the offender.

After the hearing, the CPB votes on a recommendation, which is then forwarded to the Governor. The Governor is under no legal obligation to follow the recommendation. If the Governor grants a pardon, the person's conviction will be removed from the petitioner's criminal history available to the public. The Governor is free to place conditions on the pardon, such as requiring a conviction free record for a specified period of time. A commutation results in a reduction of criminal penalties and is often conditional.

When determining whether to recommend that a person be pardoned or have their sentence commuted, the CPB focuses on the existence or non-existence of extraordinary circumstances. A petitioner must demonstrate why their circumstances are extraordinary and warrant the exercise of the Governor's discretionary pardon or commutation power. Extraordinary circumstances are not defined. Examples of factors the CPB has considered include:

- the seriousness of the offense;
- the impact on the victims;
- the offender's criminal history and other relevant background;
- acceptance of responsibility, remorse, and atonement;
- personal development and positive life changes since the offense occurred;
- benefit or risk to the community;
- position of prosecuting attorney and sentencing judge, or both;
- whether the individual has complied with all obligations imposed by the court; and
- the amount of time elapsed since the offense occurred.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Proposed Substitute):** The CPB is authorized to receive and grant petitions allowing for the early release of offenders from confinement in a correctional facility. The CPB may adopt rules outlining criteria and procedures for the review and granting of petitions. The Governor may revoke an order granting early release at any time.

CPB membership is increased from five to ten members and terms are extended from four to five years. Members of the CPB shall each receive salaries fixed by the Governor and receive reimbursement for travel expenses.

Membership on the CPB must include the following representation:

- a statewide or local organization representing communities of color or race equity;
- a statewide organization representing crime victims;
- an association, community organization, or advocacy group with experience in the formerly incarcerated and community reentry;
- a faith-based organization with interest and experience in successful community reentry;
- a statewide organization representing criminal defense lawyers;
- law enforcement;
- a statewide organization representing prosecuting attorneys;
- a person with experience and interest in tribal affairs;
- a behavioral health professional; and
- a retired superior court judge.

Before the CPB may grant a petition for early release, it must hold a public hearing. The hearing must provide an opportunity for victims and survivors of victims of any crimes for which the offender has been convicted to present a statement as well as any law enforcement agency or agencies that conducted the investigation. The prosecuting attorney of the county where the conviction was obtained must be notified at least 90 days prior to a scheduled hearing. To facilitate victim involvement, the prosecutor's office must make reasonable efforts to ensure any victim impact statements and known contact information for victims or

survivors of victims are forwarded as part of the judgment and sentence. The prosecutor's office must also make all reasonable efforts to locate and provide victim contact information to the CPB.

An offender released by the CPB is subject to conditions of release, including a term of community custody up to the length of the court-imposed term of incarceration. DOC is responsible for monitoring the offender's compliance with conditions of community custody and imposing sanctions for violations. Sanctions may include returning the offender to total confinement to serve up the remaining portion of the sentence.

Members of the CPB are not civilly liable for decisions made while performing their duties.

**Appropriation:** None.

**Fiscal Note:** Requested on January 22, 2020.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: Throughout my 20 years as a prosecutor, I have thought a lot about criminal justice reform. Nationally, Washington does a good job with our incarceration rate, but this is not true internationally. As a country, we need to do a better job. This approach is consistent with truth in sentencing. If the victim was told the offender was going to be held accountable, that is still going to be the case, whether the person is held accountable in prison or in the community. This bill is needed to implement what we have learned regarding behavior modification and accountability. It provides a structure to move forward thoughtfully and deliberately.

I spent 30 years in Washington state prison as an inmate. I was released after serving every day of a 30-year sentence. I am not the same person as I was when I went in and now have a deep desire to do good. But I think about the good men that I left behind who also deserve to be out here with us. Please have the moral and political courage to enact this bill.

Many offenders have taken the necessary steps to rehabilitate themselves while incarcerated. They have significant accomplishments and contributions to those around them. The individuals are deserving of a second chance.

As a prosecutor, over the last twelve years I have supported twenty different petitions to the CPB. Most of them had Robbery as a reason they were given LWOP. The CPB has a thoughtful and deliberative process. Currently they meet four times a year and hear about six cases per meeting. The current governor dictates the eventual decision. As a result there is a limited number of inmates who can be released utilizing this process.

This bill will send the message to inmates that their behavior matters. Professionalizing staff and dictating representation on the CPB will get you a more professional result. We would like to hear what the Governor thinks about gubernatorial authority.

Black people are disproportionately locked up. This bill would ensure that all cases are reviewed with the same lens.

CON: We have great respect for the CPB and recognize their capacity is limited. There is a long waiting list of those that have submitted a petition for review. We therefore believe it is important to address an expansion of capacity. This could be done through increased staff. We do not agree with expanding the number of board members, dictating the makeup of the board, or providing members with a salary. We also do not believe it would be appropriate for the board to be able to act without the recommendation going to the Governor.

OTHER: We have longstanding support for the CPB and like the openness of the process. We agree that more resources should be given to the CPB so that they can meet their obligations. Members are divided—some believe clemency is a constitutional power and this power would need to be expanded constitutionally. Others believe this creates a parole-like process that we tried to get away from with the SRA.

There are people that desperately need to have a second look at their cases. These are people that are thrown away and forgotten. They are at the back of the line for any programming. Regardless they have done remarkable transformative things. Expanding the CPB in a way that is diverse brings diverse and important opinions to this very important decision. Expansion is necessary and appreciated. Funding and adequate staff are necessary. This important business cannot fall on the heads of volunteers.

We would like to see two, five-person panels rather than expanding the board to ten members. We are also not convinced that the statute should dictate representation. Current members are carefully picked and the Governor is sensitive to issues of racial equity. We also believe the final decision should rest with the Governor.

**Persons Testifying:** PRO: Senator Manka Dhingra, Prime Sponsor; Dan Satterberg, King County Prosecuting Attorney; Virginia Parham, Bridges to Life; Daniel Pens, Formerly Incarcerated; Aleta Haskins, Gods House of Second Chances; Jeanne Berry; Waldo Waldron-Ramsey, Washington Community Action Network.

CON: James McMahan, Washington Association of Sheriffs and Police Chiefs.

OTHER: Russell Brown, Executive Director, Washington Association of Prosecuting Attorneys; Lawrence Haskell, Prosecuting Attorney; Kim Gordon, Washington Association of Criminal Defense Lawyers, Washington Defender Association; Noreen Light, citizen.

**Persons Signed In To Testify But Not Testifying:** No one.