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HOUSE BILL 1281

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2009 Regular Session

By Representatives Hurst, Pearson, Appleton, O'Brien, Goodman, Orcutt, Morrell, Ormsby, Simpson, and Orwall

Read first time 01/16/09. Referred to Committee on Human Services.

1 AN ACT Relating to the rights of victims, survivors, and witnesses  
2 of crimes to be heard before the indeterminate sentence review board  
3 and clemency and pardons board; amending RCW 9.95.420, 9.95.420,  
4 9.94A.885, and 7.69.030; adding a new section to chapter 7.69 RCW;  
5 providing an effective date; and providing an expiration date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 7.69 RCW  
8 to read as follows:

9 (1) The legislature recognizes the significant concerns that many  
10 victims, survivors of victims, and witnesses of crimes have when  
11 offenders are considered for postsentence release from confinement.  
12 Therefore, it is the intent of the legislature to ensure that victims,  
13 survivors of victims, and witnesses of crimes are afforded the  
14 opportunity to make a statement that will be considered prior to the  
15 granting of postsentence release from confinement for any offender  
16 under the jurisdiction of the indeterminate sentence review board or  
17 its successor, or by the governor regarding an application for pardon  
18 or commutation of sentence.

1 (2) Victims, survivors of victims, and witnesses of crimes have the  
2 following rights:

3 (a) With respect to victims, survivors of victims, and witnesses of  
4 crimes, to present a statement to the indeterminate sentence review  
5 board or its successor, in person or by representation, via audio or  
6 videotape or other electronic means, or in writing, prior to the  
7 granting of parole or community custody release for any offender under  
8 the board's jurisdiction.

9 (b) With respect to victims and survivors of victims, to present a  
10 statement to the clemency and pardons board in person, via audio or  
11 videotape or other electronic means, or in writing, at any hearing  
12 conducted regarding an application for pardon or commutation of  
13 sentence.

14 **Sec. 2.** RCW 9.95.420 and 2007 c 363 s 2 are each amended to read  
15 as follows:

16 (1)(a) Except as provided in (c) of this subsection, before the  
17 expiration of the minimum term, as part of the end of sentence review  
18 process under RCW 72.09.340, 72.09.345, and where appropriate,  
19 72.09.370, the department shall conduct, and the offender shall  
20 participate in, an examination of the offender, incorporating  
21 methodologies that are recognized by experts in the prediction of  
22 sexual dangerousness, and including a prediction of the probability  
23 that the offender will engage in sex offenses if released.

24 (b) The board may contract for an additional, independent  
25 examination, subject to the standards in this section.

26 (c) If at the time the sentence is imposed by the superior court  
27 the offender's minimum term has expired or will expire within one  
28 hundred twenty days of the sentencing hearing, the department shall  
29 conduct, within ninety days of the offender's arrival at a department  
30 of corrections facility, and the offender shall participate in, an  
31 examination of the offender, incorporating methodologies that are  
32 recognized by experts in the prediction of sexual dangerousness, and  
33 including a prediction of the probability that the offender will engage  
34 in sex offenses if released.

35 (2) The board shall impose the conditions and instructions provided  
36 for in RCW 9.94A.720. The board shall consider the department's

1 recommendations and may impose conditions in addition to those  
2 recommended by the department. The board may impose or modify  
3 conditions of community custody following notice to the offender.

4 (3)(a) Except as provided in (b) of this subsection, no later than  
5 ninety days before expiration of the minimum term, but after the board  
6 receives the results from the end of sentence review process and the  
7 recommendations for additional or modified conditions of community  
8 custody from the department, the board shall conduct a hearing to  
9 determine whether it is more likely than not that the offender will  
10 engage in sex offenses if released on conditions to be set by the  
11 board. The board may consider an offender's failure to participate in  
12 an evaluation under subsection (1) of this section in determining  
13 whether to release the offender. The board shall order the offender  
14 released, under such affirmative and other conditions as the board  
15 determines appropriate, unless the board determines by a preponderance  
16 of the evidence that, despite such conditions, it is more likely than  
17 not that the offender will commit sex offenses if released. If the  
18 board does not order the offender released, the board shall establish  
19 a new minimum term as provided in RCW 9.95.011.

20 (b) If at the time the offender's minimum term has expired or will  
21 expire within one hundred twenty days of the offender's arrival at a  
22 department of correction's facility, then no later than one hundred  
23 twenty days after the offender's arrival at a department of corrections  
24 facility, but after the board receives the results from the end of  
25 sentence review process and the recommendations for additional or  
26 modified conditions of community custody from the department, the board  
27 shall conduct a hearing to determine whether it is more likely than not  
28 that the offender will engage in sex offenses if released on conditions  
29 to be set by the board. The board may consider an offender's failure  
30 to participate in an evaluation under subsection (1) of this section in  
31 determining whether to release the offender. The board shall order the  
32 offender released, under such affirmative and other conditions as the  
33 board determines appropriate, unless the board determines by a  
34 preponderance of the evidence that, despite such conditions, it is more  
35 likely than not that the offender will commit sex offenses if released.  
36 If the board does not order the offender released, the board shall  
37 establish a new minimum term as provided in RCW 9.95.011.

1 (4) In a hearing conducted under subsection (3) of this section,  
2 the board shall provide opportunities for the victims of any crimes for  
3 which the offender has been convicted to present (~~oral, video,~~  
4 ~~written, or in person testimony to the board~~) statements as set forth  
5 in section 1 of this act. The procedures for victim input shall be  
6 developed by rule. To facilitate victim involvement, county  
7 prosecutor's offices shall ensure that any victim impact statements and  
8 known contact information for victims of record are forwarded as part  
9 of the judgment and sentence.

10 **Sec. 3.** RCW 9.95.420 and 2008 c 231 s 44 are each amended to read  
11 as follows:

12 (1)(a) Except as provided in (c) of this subsection, before the  
13 expiration of the minimum term, as part of the end of sentence review  
14 process under RCW 72.09.340, 72.09.345, and where appropriate,  
15 72.09.370, the department shall conduct, and the offender shall  
16 participate in, an examination of the offender, incorporating  
17 methodologies that are recognized by experts in the prediction of  
18 sexual dangerousness, and including a prediction of the probability  
19 that the offender will engage in sex offenses if released.

20 (b) The board may contract for an additional, independent  
21 examination, subject to the standards in this section.

22 (c) If at the time the sentence is imposed by the superior court  
23 the offender's minimum term has expired or will expire within one  
24 hundred twenty days of the sentencing hearing, the department shall  
25 conduct, within ninety days of the offender's arrival at a department  
26 of corrections facility, and the offender shall participate in, an  
27 examination of the offender, incorporating methodologies that are  
28 recognized by experts in the prediction of sexual dangerousness, and  
29 including a prediction of the probability that the offender will engage  
30 in sex offenses if released.

31 (2) The board shall impose the conditions and instructions provided  
32 for in RCW 9.94A.704. The board shall consider the department's  
33 recommendations and may impose conditions in addition to those  
34 recommended by the department. The board may impose or modify  
35 conditions of community custody following notice to the offender.

36 (3)(a) Except as provided in (b) of this subsection, no later than  
37 ninety days before expiration of the minimum term, but after the board

1 receives the results from the end of sentence review process and the  
2 recommendations for additional or modified conditions of community  
3 custody from the department, the board shall conduct a hearing to  
4 determine whether it is more likely than not that the offender will  
5 engage in sex offenses if released on conditions to be set by the  
6 board. The board may consider an offender's failure to participate in  
7 an evaluation under subsection (1) of this section in determining  
8 whether to release the offender. The board shall order the offender  
9 released, under such affirmative and other conditions as the board  
10 determines appropriate, unless the board determines by a preponderance  
11 of the evidence that, despite such conditions, it is more likely than  
12 not that the offender will commit sex offenses if released. If the  
13 board does not order the offender released, the board shall establish  
14 a new minimum term as provided in RCW 9.95.011.

15 (b) If at the time the offender's minimum term has expired or will  
16 expire within one hundred twenty days of the offender's arrival at a  
17 department of correction's facility, then no later than one hundred  
18 twenty days after the offender's arrival at a department of corrections  
19 facility, but after the board receives the results from the end of  
20 sentence review process and the recommendations for additional or  
21 modified conditions of community custody from the department, the board  
22 shall conduct a hearing to determine whether it is more likely than not  
23 that the offender will engage in sex offenses if released on conditions  
24 to be set by the board. The board may consider an offender's failure  
25 to participate in an evaluation under subsection (1) of this section in  
26 determining whether to release the offender. The board shall order the  
27 offender released, under such affirmative and other conditions as the  
28 board determines appropriate, unless the board determines by a  
29 preponderance of the evidence that, despite such conditions, it is more  
30 likely than not that the offender will commit sex offenses if released.  
31 If the board does not order the offender released, the board shall  
32 establish a new minimum term as provided in RCW 9.95.011.

33 (4) In a hearing conducted under subsection (3) of this section,  
34 the board shall provide opportunities for the victims of any crimes for  
35 which the offender has been convicted to present (~~oral, video,~~  
36 ~~written, or in person testimony to the board~~) statements as set forth  
37 in section 1 of this act. The procedures for victim input shall be  
38 developed by rule. To facilitate victim involvement, county

1 prosecutor's offices shall ensure that any victim impact statements and  
2 known contact information for victims of record are forwarded as part  
3 of the judgment and sentence.

4 **Sec. 4.** RCW 9.94A.885 and 1999 c 323 s 3 are each amended to read  
5 as follows:

6 (1) The clemency and pardons board shall receive petitions from  
7 individuals, organizations, and the department for review and  
8 commutation of sentences and pardoning of offenders in extraordinary  
9 cases, and shall make recommendations thereon to the governor.

10 (2) The board shall receive petitions from individuals or  
11 organizations for the restoration of civil rights lost by operation of  
12 state law as a result of convictions for federal offenses or out-of-  
13 state felonies. The board may issue certificates of restoration  
14 limited to the elective rights to vote and to engage in political  
15 office. Any certifications granted by the board must be filed with the  
16 secretary of state to be effective. In all other cases, the board  
17 shall make recommendations to the governor.

18 (3) The board shall not recommend that the governor grant clemency  
19 under subsection (1) of this section until a public hearing has been  
20 held on the petition. The prosecuting attorney of the county where the  
21 conviction was obtained shall be notified at least thirty days prior to  
22 the scheduled hearing that a petition has been filed and the date and  
23 place at which the hearing on the petition will be held. The board may  
24 waive the thirty-day notice requirement in cases where it determines  
25 that waiver is necessary to permit timely action on the petition. A  
26 copy of the petition shall be sent to the prosecuting attorney. The  
27 prosecuting attorney shall make reasonable efforts to notify victims,  
28 survivors of victims, witnesses, and the law enforcement agency or  
29 agencies that conducted the investigation, of the date and place of the  
30 hearing. Information regarding victims, survivors of victims, or  
31 witnesses receiving this notice are confidential and shall not be  
32 available to the offender. The board shall consider (~~written, oral,~~  
33 ~~audio, or videotaped statements regarding the petition received,~~  
34 ~~personally or by representation, from the individuals who receive~~  
35 ~~notice pursuant to this section)) statements presented as set forth in  
36 section 1 of this act. This subsection is intended solely for the~~

1 guidance of the board. Nothing in this section is intended or may be  
2 relied upon to create a right or benefit, substantive or procedural,  
3 enforceable at law by any person.

4 **Sec. 5.** RCW 7.69.030 and 2008 c 286 s 16 are each amended to read  
5 as follows:

6 There shall be a reasonable effort made to ensure that victims,  
7 survivors of victims, and witnesses of crimes have the following  
8 rights, which apply to any criminal court and/or juvenile court  
9 proceeding:

10 (1) With respect to victims of violent or sex crimes, to receive,  
11 at the time of reporting the crime to law enforcement officials, a  
12 written statement of the rights of crime victims as provided in this  
13 chapter. The written statement shall include the name, address, and  
14 telephone number of a county or local crime victim/witness program, if  
15 such a crime victim/witness program exists in the county;

16 (2) To be informed by local law enforcement agencies or the  
17 prosecuting attorney of the final disposition of the case in which the  
18 victim, survivor, or witness is involved;

19 (3) To be notified by the party who issued the subpoena that a  
20 court proceeding to which they have been subpoenaed will not occur as  
21 scheduled, in order to save the person an unnecessary trip to court;

22 (4) To receive protection from harm and threats of harm arising out  
23 of cooperation with law enforcement and prosecution efforts, and to be  
24 provided with information as to the level of protection available;

25 (5) To be informed of the procedure to be followed to apply for and  
26 receive any witness fees to which they are entitled;

27 (6) To be provided, whenever practical, a secure waiting area  
28 during court proceedings that does not require them to be in close  
29 proximity to defendants and families or friends of defendants;

30 (7) To have any stolen or other personal property expeditiously  
31 returned by law enforcement agencies or the superior court when no  
32 longer needed as evidence. When feasible, all such property, except  
33 weapons, currency, contraband, property subject to evidentiary  
34 analysis, and property of which ownership is disputed, shall be  
35 photographed and returned to the owner within ten days of being taken;

36 (8) To be provided with appropriate employer intercession services  
37 to ensure that employers of victims, survivors of victims, and

1 witnesses of crime will cooperate with the criminal justice process in  
2 order to minimize an employee's loss of pay and other benefits  
3 resulting from court appearance;

4 (9) To access to immediate medical assistance and not to be  
5 detained for an unreasonable length of time by a law enforcement agency  
6 before having such assistance administered. However, an employee of  
7 the law enforcement agency may, if necessary, accompany the person to  
8 a medical facility to question the person about the criminal incident  
9 if the questioning does not hinder the administration of medical  
10 assistance. Victims of domestic violence, sexual assault, or stalking,  
11 as defined in RCW 49.76.020, shall be notified of their right to  
12 reasonable leave from employment under chapter 49.76 RCW;

13 (10) With respect to victims of violent and sex crimes, to have a  
14 crime victim advocate from a crime victim/witness program, or any other  
15 support person of the victim's choosing, present at any prosecutorial  
16 or defense interviews with the victim, and at any judicial proceedings  
17 related to criminal acts committed against the victim. This subsection  
18 applies if practical and if the presence of the crime victim advocate  
19 or support person does not cause any unnecessary delay in the  
20 investigation or prosecution of the case. The role of the crime victim  
21 advocate is to provide emotional support to the crime victim;

22 (11) With respect to victims and survivors of victims, to be  
23 physically present in court during trial, or if subpoenaed to testify,  
24 to be scheduled as early as practical in the proceedings in order to be  
25 physically present during trial after testifying and not to be excluded  
26 solely because they have testified;

27 (12) With respect to victims and survivors of victims, to be  
28 informed by the prosecuting attorney of the date, time, and place of  
29 the trial and of the sentencing hearing for felony convictions upon  
30 request by a victim or survivor;

31 (13) To submit a victim impact statement or report to the court,  
32 with the assistance of the prosecuting attorney if requested, which  
33 shall be included in all presentence reports and permanently included  
34 in the files and records accompanying the offender committed to the  
35 custody of a state agency or institution;

36 (14) With respect to victims and survivors of victims, to present  
37 a statement personally or by representation, at the sentencing hearing  
38 for felony convictions; and



1           (15) With respect to victims and survivors of victims, to entry of  
2 an order of restitution by the court in all felony cases, even when the  
3 offender is sentenced to confinement, unless extraordinary  
4 circumstances exist which make restitution inappropriate in the court's  
5 judgment((;and

6           ~~(16) With respect to victims and survivors of victims, to present~~  
7 ~~a statement in person, via audio or videotape, in writing or by~~  
8 ~~representation at any hearing conducted regarding an application for~~  
9 ~~pardon or commutation of sentence)).~~

10           NEW SECTION.   **Sec. 6.**   Section 2 of this act expires August 1,  
11 2009.

12           NEW SECTION.   **Sec. 7.**   Section 3 of this act takes effect August 1,  
13 2009.

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