

SENATE BILL REPORT

SB 6566

As Reported by Senate Committee On:
Law & Justice, February 28, 2014

Title: An act relating to affirming the authority of the clemency and pardons board to make recommendations to the governor regarding petitions for reprieve to ensure that victims, law enforcement, prisoners, and others are heard.

Brief Description: Affirming the authority of the clemency and pardons board to make recommendations to the governor regarding petitions for reprieve to ensure that victims, law enforcement, prisoners, and others are heard.

Sponsors: Senators O'Ban, Padden, Pearson and Sheldon.

Brief History:

Committee Activity: Law & Justice: 2/26/14, 2/28/14 [DP, DNP].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pearson and Roach.

Minority Report: Do not pass.

Signed by Senators Kline, Ranking Member; Darneille and Pedersen.

Staff: Aldo Melchiori (786-7439)

Background: The Washington State Constitution and several state statutes give the Governor certain powers over persons sentenced to death in the state. Article III, section 9 provides: "The pardoning power shall be vested in the governor under such regulations and restrictions as may be prescribed by law." Article III, section 11 provides: "The governor shall have power to remit fines and forfeitures, under such regulations as may be prescribed by law, and shall report to the legislature at its next meeting each case of reprieve, commutation or pardon granted, and the reasons for granting the same, and also the names of all persons in whose favor remission of fines and forfeitures shall have been made, and the several amounts remitted and the reasons for the remission."

The Governor has the authority to commute a death sentence to life in prison at hard labor or, upon a petition from the offender, to pardon the offender. A commutation is generally

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defined as a lessening of the criminal penalty, whereas a pardon is often defined as the termination of the criminal penalty. The Governor may also, on good cause shown, grant respites or reprieves from time to time as the Governor may think proper to temporarily delay the imposition of a death sentence.

In addition to the Governor's constitutional and statutory authority to issue pardons and commute death sentences, the Legislature created a Clemency and Pardons Board (Board) to make recommendations to the Governor concerning petitions for pardon or clemency.

The Board consists of five members appointed by the Governor and subject to confirmation by the state Senate. The Board holds regular quarterly meetings, but can call special meetings at other times when appropriate.

The Board is charged with receiving petitions "from individuals, organizations, and the department (of corrections) for review and commutation of sentences and pardoning of offenders in extraordinary cases...." After receiving a petition, the Board evaluates whether the petitioner's request merits a hearing. If a hearing is determined to be appropriate, the Board 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 Board votes on a recommendation, which is then forwarded to the Governor. The Governor is under no legal obligation to follow the recommendation.

Summary of Bill: Good cause, in the context of the Governor's ability to grant a respite or reprieve, means that the Governor has undergone an individualized consideration of the facts of a specific conviction after receiving a recommendation from the Board.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on July 1, 2014.

Staff Summary of Public Testimony: PRO: The Governor has the power to issue reprieves, but that power is not unfettered. The state Constitution limits the Governor's exclusive power. The Governor's power should comply with the process of individualized consideration. Some offenders murder multiple victims in a brutal manner and show no remorse or regret. Surviving families are affected for the rest of their lives. Victims' families pay taxes used to provide housing and clothes for the murderers of their loved ones. Victims' families deserve justice. These murderers had fair trials and multiple appeals and were sentenced fairly. They should now serve their sentences. The Governor did not contact many of the victims' families before taking this action. Families wait years for justice. If offenders thought life in prison was worse than the death penalty, they would not appeal their sentences. These murderers have no right to live. When the people voted for the death penalty, they were saying that it is what they wanted. Imagine what your life would be

without your loved one. Families trusted the judicial system and now the Governor is overriding the court without process. The Governor did not consult prosecutors. Some prosecutors do not agree with the death penalty, but they follow the law and make individualized decisions. This bill would give direction to the Governor to assist him in the process of determining whether a reprieve is appropriate.

CON: Surviving family members differ on this issue and some strongly oppose capital punishment. Many murderers are not charged with aggravated murder and are not subject to capital punishment at the prosecutor's discretion. This pause will give us the opportunity to have a conversation about capital punishment. This bill would interfere with the conversation.

OTHER: The Governor is not issuing pardons or commutations. He has not given a reprieve; he has just expressed his intent to do so if a case comes to him. Prosecutors can still seek the death penalty in appropriate cases and all of the current appeals processes will not be affected. The Clemency and Pardons Board was not formed to give the Governor advice about reprieves. There is no current requirement that the Governor contact victims' families. The Department of Corrections (DOC) staff safety has been enhanced since the murder in the state facility. States without the death penalty or with moratoria have not experienced an increase in prison violence. Offenders will still be on death row and subject to capital punishment in the future.

Persons Testifying: PRO: Senator O'Ban, prime sponsor; Jessie Ripley, Kathy Obert, Jim Hungerford, Ed Oster, Leola Peden, Roger Shaver, Sherry Shaver, victim family members; Michael Boe, Teamsters 117; Jonathan Meyer, Lewis County Prosecutor's Office; Shawn Shant, Franklin County Prosecutor's Office; David McEachran, Whatcom County Prosecutor's Office.

CON: Sandy Felkey Mullins, Governor Inslee's Office; Bernie Warner, Secretary, DOC; Sal Mungia, American Civil Liberties Union of WA.

OTHER: Debbie Regala, former Senator