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## Public Safety Committee

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### HB 1866

**Brief Description:** Reviewing elderly incarcerated offenders for possible early release.

**Sponsors:** Representatives Pettigrew, Appleton, Hudgins, Kagi, Fitzgibbon, Robinson, Tharinger, Ormsby, McBride and Santos.

#### Brief Summary of Bill

- Allows certain elderly offenders over the age of 50 to petition the Indeterminate Sentence Review Board (ISRB) for early release after serving 20 years in prison.
- Mandates community custody for released offenders for a minimum term of three years and a maximum term of up to the original sentence imposed by the court.
- Requires the ISRB to report to the Legislature on release information and possible recommendations for expansion by December 1, 2022.

**Hearing Date:** 1/18/18

**Staff:** Kelly Leonard (786-7147).

#### 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 sentence range provided in statute, which is calculated using both a statutory severity designation for the offense, or its "seriousness level," and the offender's "offender score," which is based on the offender's criminal history. In addition to the standard range, other factors affect the sentence, including: enhancements; exceptional sentences; consecutive/concurrent sentences; persistent offender ("Three Strikes" and "Two Strikes") laws; and alternative sentences.

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*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.*

Some offenders are eligible for earned early release for good behavior and good performance. The amount of the sentence eligible for earned early release varies depending on the circumstances of the offender's underlying offense and date of conviction. Earned early release is limited to 10 percent for class A felony sex offenses and serious violent offenses, and 33 percent for other offenses. Many sentences are not eligible for earned early release, including portions of sentences for mandatory firearm or deadly weapon enhancements.

*Review of Sentences.* There are some exceptions to determinate sentencing where certain offenders are sentenced to a range and are eligible for review by the Indeterminate Sentence Review Board (ISRB) after serving a minimum term. The ISRB, the successor board to the Board of Prison Terms and Paroles in existence prior to the SRA, has authority to release and supervise offenders serving indeterminate sentences, including:

- offenders convicted before the enactment of the SRA, July 1, 1984;
- sex offenders who committed their offenses after August 31, 2001, and who have "indeterminate-plus" sentences rather than determinate sentences; and
- offenders who committed crimes under the age of 18 and were sentenced for terms longer than 20 years.

*Community Custody.* Community custody is the portion of an offender's sentence served in the community subject to supervision by the Department of Corrections (DOC). Courts are mandated to order community custody for offenders convicted of certain crimes delineated in statute. If an offender violates the conditions of community custody, the offender may be required to serve up to the remaining portion of his or her sentence in confinement.

### **Summary of Bill:**

*Petition and Hearing for Early Release.* Regardless of other sentencing laws, an offender over the age of 50 may petition the ISRB for early release after serving 20 years of total confinement. An offender must not have a major violation in the 12 months prior to filing the petition for early release. The following offenses disqualify someone from eligibility for release under this new program:

- an offense committed before July 1, 1984, where the offender is currently eligible for review by the ISRB;
- an offense committed before the offender's eighteenth birthday where the offender is currently eligible for review by the ISRB;
- a sex offense, including both sex offenses under Determinate-Plus and other sex offenses; or
- Aggravated First Degree Murder.

*Assessment of Eligible Offenders.* No later than five years prior to the date the offender will be eligible to petition the ISRB, the DOC is required to conduct an assessment of the offender and identify appropriate programming to prepare the offender for return to the community. Within six months of receiving the petition, the DOC will conduct an examination of the offender, including a prediction of the probability that the person will engage in future criminal behavior.

*Indeterminate Sentence Review Board Review Process.* The ISRB's decision to release an offender is discretionary based on consideration of criteria established by the ISRB. Those criteria must include consideration of: public safety; the seriousness of the offense; crime

victims; the offender's remorse and atonement for the offense committed, or absence thereof; the offender's productivity and life changes while incarcerated; the offender's infraction history while incarcerated; the offender's completion of and responsivity to programs made available to him or her while incarcerated; the offender's rehabilitative status; and the offender's behavioral health history. Regardless of the criteria, the ISRB must give public safety considerations the highest priority when making all decisions regarding the ability for release and conditions of release.

The ISRB must provide opportunities for victims and survivors of victims to present statements as set forth in current victims' rights laws, including complying with the current procedures for notice, disclosure, and hearings.

An offender whose petition for release is denied may file a new petition for release five years from the date of denial or at an earlier date as may be set by the ISRB.

*Community Custody.* When the ISRB orders early release, the ISRB must order and DOC must enforce community custody for at least three years, but not more than the period up to the expiration of the original sentence, including total and partial confinement, imposed by the court. The DOC must monitor the offender's compliance with conditions of community custody and promptly report any violations to the ISRB. If a released offender violates his or her conditions of community custody, he or she may be returned to prison at the discretion of the ISRB if the offender is found to have violated a condition of community custody.

*Study.* By December 1, 2022, the ISRB must submit a report to the appropriate committees of the Legislature and the Governor with the following:

- the criteria established and used by the ISRB;
- a summary of the petition review process;
- information on the offenders released, including the total number of those released, demographic information, criminal history information, and community custody terms and status;
- information on the offenders denied release, including the total number of those denied release, demographic information, and criminal history information;
- information on the offenders released and subsequently returned to confinement for community custody violations or new criminal convictions;
- an evaluation of the effectiveness of the early release process in the bill with respect to reducing incarceration of rehabilitated, elderly offenders while maintaining public safety; and
- recommendations, if appropriate, to expand the eligibility for early release, including, but not limited to, the addition of offenses otherwise excluded.

**Appropriation:** None.

**Fiscal Note:** Requested on January 17, 2018.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.