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**SENATE BILL 6530**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Senators Dhingra and Wilson, C.

AN ACT Relating to postconviction review by the clemency and pardons board; amending RCW 9.94A.728 and 9.94A.880; reenacting and amending RCW 9.94A.885; adding a new section to chapter 9.94A RCW; and creating a new section.

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

NEW SECTION. **Sec.**  Since the 1980s, the legislature has passed numerous laws increasing terms of confinement for almost all offenders, including: The elimination of parole; increasing statutory sentence ranges; establishing mandatory minimums; and establishing persistent offender laws. Exceptionally long sentences have proved to be especially ineffective at reducing recidivism or improving public safety. Many persons sentenced to extremely long sentences were young, under the age of thirty, when they were convicted and sentenced.

The legislature finds that Washington's prison system serves the public good by providing rehabilitative services and protecting public safety. The legislature declares that prisoner rehabilitation is a priority for the department of corrections. The legislature has determined that in certain situations, incarceration well beyond rehabilitation may not further the goal of addressing public safety and providing for effective rehabilitation.

The legislature affirms that research in cognitive development and brain science has given us the information necessary to trust that against the backdrop of rehabilitation, hope, and effective programming, many prisoners are able to fully rehabilitate. The legislature finds that the public has both a financial and humanitarian interest in those who have been fully rehabilitated to reenter the community if they are ready, in the state's view, to be productive members of society.

As such, the legislature intends to create a process of review to examine certain prisoners' progress in rehabilitation and their potential to reenter the community. The legislature intends to extend the pardoning powers of the governor by expanding the authority and size of the currently existing clemency and pardons board. The clemency and pardons board shall review postconviction cases for early release of prisoners who have served twenty consecutive years or more, as set forth in this act.

**Sec.**  RCW 9.94A.728 and 2018 c 166 s 2 are each amended to read as follows:

(1) No person serving a sentence imposed pursuant to this chapter and committed to the custody of the department shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

(a) An offender may earn early release time as authorized by RCW 9.94A.729;

(b) An offender may leave a correctional facility pursuant to an authorized furlough or leave of absence. In addition, offenders may leave a correctional facility when in the custody of a corrections officer or officers;

(c)(i) The secretary may authorize an extraordinary medical placement for an offender when all of the following conditions exist:

(A) The offender has a medical condition that is serious and is expected to require costly care or treatment;

(B) The offender poses a low risk to the community because he or she is currently physically incapacitated due to age or the medical condition or is expected to be so at the time of release; and

(C) It is expected that granting the extraordinary medical placement will result in a cost savings to the state.

(ii) An offender sentenced to death or to life imprisonment without the possibility of release or parole is not eligible for an extraordinary medical placement.

(iii) The secretary shall require electronic monitoring for all offenders in extraordinary medical placement unless the electronic monitoring equipment interferes with the function of the offender's medical equipment or results in the loss of funding for the offender's medical care, in which case, an alternative type of monitoring shall be utilized. The secretary shall specify who shall provide the monitoring services and the terms under which the monitoring shall be performed.

(iv) The secretary may revoke an extraordinary medical placement under this subsection (1)(c) at any time.

(v) Persistent offenders are not eligible for extraordinary medical placement;

(d) The governor, upon recommendation from the clemency and pardons board, may grant an extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances;

(e) No more than the final twelve months of the offender's term of confinement may be served in partial confinement for aiding the offender with: Finding work as part of the work release program under chapter 72.65 RCW; or reestablishing himself or herself in the community as part of the parenting program in RCW 9.94A.6551. This is in addition to that period of earned early release time that may be exchanged for partial confinement pursuant to RCW 9.94A.729(5)(d);

(f) No more than the final six months of the offender's term of confinement may be served in partial confinement as home detention as part of the graduated reentry program developed by the department under RCW 9.94A.733;

(g) The governor may pardon any offender;

(h) The department may release an offender from confinement any time within ten days before a release date calculated under this section;

(i) An offender may leave a correctional facility prior to completion of his or her sentence if the sentence has been reduced as provided in RCW 9.94A.870;

(j) Notwithstanding any other provisions of this section, an offender sentenced for a felony crime listed in RCW 9.94A.540 as subject to a mandatory minimum sentence of total confinement shall not be released from total confinement before the completion of the listed mandatory minimum sentence for that felony crime of conviction unless allowed under RCW 9.94A.540; ((~~and~~))

(k) Any person convicted of one or more crimes committed prior to the person's eighteenth birthday may be released from confinement pursuant to RCW 9.94A.730; and

(l) An offender may leave a correctional facility subject to an order granting early release from the clemency and pardons board.

(2) Offenders residing in a juvenile correctional facility placement pursuant to RCW 72.01.410(1)(a) are not subject to the limitations in this section.

**Sec.**  RCW 9.94A.880 and 2011 c 336 s 335 are each amended to read as follows:

(1) The clemency and pardons board is established as a board within the office of the governor. The board consists of ((~~five~~)) ten members appointed by the governor, subject to confirmation by the senate.

(2) Board membership must consist of the following:

(a) Representative of a statewide or local organization representing communities of color or race equity;

(b) Representative of a statewide organization representing crime victims;

(c) Representative of an association, community organization, or advocacy group with experience or interest in the formerly incarcerated and successful community reentry;

(d) Representative of a faith-based organization with interest and experience in successful community reentry;

(e) Representative of a statewide organization representing criminal defense lawyers;

(f) Law enforcement professional;

(g) Representative of a statewide organization representing prosecuting attorneys;

(h) Person with experience and interest in tribal affairs;

(i) Behavioral health professional; and

(j) A retired superior court judge.

(3) Board members must understand the principles of racial equity and restorative justice.

(4) Members of the board shall serve terms of ((~~four~~)) five years ((~~and~~)), but may serve more than one term until their successors are appointed and confirmed. ((~~However, the~~)) The governor shall stagger the initial terms ((~~by appointing one of the initial members for a term of one year, one for a term of two years, one for a term of three years, and two for terms of four years~~)) so that no more than three members are up for appointment in any given year.

((~~(3)~~)) (5) The board shall elect a chair from among its members and shall adopt bylaws governing the operation of the board.

((~~(4)~~)) (6) Members of the board shall ((~~receive no compensation but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended~~)) each severally receive salaries fixed by the governor in accordance with the provisions of RCW 43.03.040, and in addition shall receive travel expenses incurred in the discharge of their official duties in accordance with RCW 43.03.050 and 43.03.060.

((~~(5)~~)) (7) The board shall be funded adequate personnel to implement and maintain functional operations such as support, records, victim liaisons, and information technology.

(8) The attorney general shall provide ((~~a staff as needed for the operation of~~)) legal counsel to the board.

**Sec.**  RCW 9.94A.885 and 2009 c 325 s 6 and 2009 c 138 s 4 are each reenacted and amended to read as follows:

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

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

(3) The board shall receive and may grant petitions for early release from individuals who have served at least twenty consecutive years of total confinement, subject to the provisions of section 5 of this act.

(4) The governor may revoke an order granting early release under subsection (3) of this section at any time.

(5) The board shall not recommend that the governor grant clemency under subsection (1) of this section until a public hearing has been held on the petition. The prosecuting attorney of the county where the conviction was obtained shall be notified at least thirty days prior to the scheduled hearing that a petition has been filed and the date and place at which the hearing on the petition will be held. The board may waive the thirty-day notice requirement in cases where it determines that waiver is necessary to permit timely action on the petition. A copy of the petition shall be sent to the prosecuting attorney. The prosecuting attorney shall make reasonable efforts to notify victims, survivors of victims, witnesses, and the law enforcement agency or agencies that conducted the investigation, of the date and place of the hearing. Information regarding victims, survivors of victims, or witnesses receiving this notice are confidential and shall not be available to the offender. The board shall consider statements presented as set forth in RCW 7.69.032. This subsection is intended solely for the guidance of the board. Nothing in this section is intended or may be relied upon to create a right or benefit, substantive or procedural, enforceable at law by any person.

(6) The board shall not grant a petition for early release under subsection (3) of this section until a public hearing has been held on the petition. The panel shall provide opportunities for victims and survivors of victims of any crimes for which the offender has been convicted to present statements as set forth in RCW 7.69.032. The procedures for victim and survivor of victim input must be provided by rule. To facilitate victim and survivor of victim involvement, county prosecutor's offices shall make reasonable efforts to ensure that any victim impact statements and known contact information for victims of record and survivors of victims are forwarded as part of the judgment and sentence. In the event that no known victim or survivor of the victim is known or identified for the panel, the county prosecutor's office shall be given reasonable time to certify to the panel that it has exhausted all reasonable efforts in locating and providing contact information to the panel.

NEW SECTION. **Sec.**  A new section is added to chapter 9.94A RCW to read as follows:

(1) Notwithstanding any other provision of this chapter, a person may petition the board for early release if the person:

(a) Is not subject to the jurisdiction of the indeterminate sentence review board pursuant to RCW 9.94A.730 or 9.94A.507, or the person's offense was committed prior to July 1, 1984;

(b) Has served at least twenty consecutive years of total confinement;

(c) Consents to a review of all of his or her medical, mental health, and department files by the board; and

(d) Does not have any current appeals pending.

(2) No later than five years prior to the date the offender will be eligible to petition for release, the department shall:

(a) Notify the offender regarding his or her eligibility under this section; and

(b) Conduct an assessment of the offender and identify programming and services that would be appropriate to prepare the offender for return to the community. To the extent possible, the department shall make programming available as identified by the assessment.

(3) If the offender has a prior known or diagnosed decreased cognitive function or developmental disability, or a decreased cognitive function or developmental disability is determined during the assessment process as outlined in subsection (2)(b) of this section, the department shall assist the offender with the process of applying for review by the board or refer to additional services for such assistance.

(4) No later than one hundred eighty days from the date that the offender submits his or her petition for early release to the board, the department shall conduct, and the offender shall participate in, an examination of the person, incorporating methodologies that are evidence-based, normed on the specific gender of the offender, and recognized by experts in the prediction of dangerousness, and including a prediction of the probability that the person will engage in future criminal behavior if released on conditions to be set by the board. The board may consider a person's failure to participate in an evaluation under this subsection in determining whether to release the person.

(5) The board shall order the person released under such affirmative and other conditions as the panel determines appropriate, unless the panel determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the person will commit new criminal law violations if released.

(6) The board may take any of the following actions:

(a) Deny a petition without a hearing because the offender does not meet the initial criteria for filing a petition; or

(b) Conduct a hearing in accordance with RCW 9.94A.885 to consider additional information, and then grant or deny the petition.

(7) In making its decision, the board shall consider, if available, the following factors and information:

(a) Public safety;

(b) The offender's criminal history;

(c) The nature and circumstances of the offenses committed, including the current and past offenses;

(d) The offender's social and medical history;

(e) Evidence of the offender's remorse, atonement, and self-reflection in relation to the offense committed, including any efforts to participate in the department's victim offender dialogue program. If the individual submitted an *Alford* plea, the board shall take into consideration the impact that may have on an individual's ability to provide evidence of remorse and atonement;

(f) Evidence of the offender's rehabilitation, including behavior while incarcerated, job history, education participation in available rehabilitative program and treatment, and infraction history;

(g) Statements of correctional staff, program supervisors, and volunteer facilitators regarding the offender;

(h) Input from the victims of the crime;

(i) Input from the police and prosecutors in the jurisdictions where the offender's crimes were committed;

(j) Input from persons in the community pledging their support of the offender, if released;

(k) The available resources in the community to help the transition for the offender to life outside of prison;

(l) A risk assessment and psychological evaluation provided by the department;

(m) The sentencing judge's analysis in imposing an exceptional sentence, if any; and

(n) Any other relevant factors.

Further, the board shall consider a release plan presented by the offender showing where the offender will reside and how he or she will support himself or herself during the first year after his or her release. The department shall independently review the proposed release plan and make an independent evaluation to ensure the defendant is not released to an area where the victim resides or that impacts community safety.

(8) If the board grants or denies the petition, it shall specify the reasons for the decision.

(9) The granting or denial of a petition is reviewable only if the board fails to follow the proper procedures.

(10) The decision of the board shall be filed with the superior court in the county where the last offense took place, and a certified copy shall be provided to the department. Before the release of an offender, the department shall have direct contact with the board or judge to confirm the decision.

(11) The conditions for release may include: Partial confinement for up to six months, regular drug and/or alcohol testing, no violations of law, restrictions on travel, no contact with certain individuals or classes of individuals, restrictions on the type of employment and any other restrictions that the board determines to be reasonable and appropriate, or any other condition which provides for community protection from the released defendant.

(12) An offender released by the board is subject to the supervision of the department up to the length of the court-imposed term of incarceration. The department shall monitor the offender's compliance with conditions of community custody imposed by the court or board and promptly report any violations to the board. Any violation of conditions of community custody established or modified by the board is subject to the provisions of RCW 9.95.425, 9.95.430, 9.95.435, and 9.95.440.

(13) An offender whose petition for release is denied may file a new petition for release three years from the date of denial or at an earlier date as may be set by the board.

(14) An offender released under the provisions of this section may be returned to the institution at the discretion of the board if the offender is found to have violated a condition of community custody. The offender is entitled to a hearing pursuant to RCW 9.95.435. If the board finds that the offender has committed a new violation that is a felony, the board shall return the offender to the institution for up to the remainder of the court-imposed term of incarceration. An offender who has been returned to custody for having committed a new law violation that is a felony may not file a new petition for release.

(15) The offender does not have a right to appointed counsel. Both lawyers and nonlawyers may assist the offender in the preparation of his or her petition and at the hearing.

(16) All information contained in a petition or that is submitted to the board is subject to public disclosure.

(17) Members of the board are not civilly liable for decisions made while performing their duties.

(18) For purposes of this section, "board" means the clemency and pardons board.

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