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ENGROSSED SECOND SUBSTITUTE SENATE BILL 5036

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State of Washington

67th Legislature

2021 Regular Session

By Senate Ways & Means (originally sponsored by Senators Dhingra, Carlyle, Darneille, Das, Hasegawa, Mullet, Nguyen, Pedersen, Stanford, Wellman, and Wilson, C.)

READ FIRST TIME 02/22/21.

1 AN ACT Relating to the release of incarcerated individuals from  
2 total confinement prior to the expiration of a sentence; amending RCW  
3 9.94A.501, 9.94A.565, 9.94A.633, 9.94A.728, and 9.94A.880; reenacting  
4 and amending RCW 9.94A.885; adding a new section to chapter 9.94A  
5 RCW; creating a new section; and providing an expiration date.

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

7 **Sec. 1.** RCW 9.94A.501 and 2020 c 275 s 1 are each amended to  
8 read as follows:

9 (1) The department shall supervise the following (~~offenders~~)  
10 individuals who are sentenced to probation in superior court,  
11 pursuant to RCW 9.92.060, 9.95.204, or 9.95.210:

12 (a) (~~Offenders~~) Individuals convicted of:

13 (i) Sexual misconduct with a minor second degree;

14 (ii) Custodial sexual misconduct second degree;

15 (iii) Communication with a minor for immoral purposes; and

16 (iv) Violation of RCW 9A.44.132(2) (failure to register); and

17 (b) (~~Offenders~~) Individuals who have:

18 (i) A current conviction for a repetitive domestic violence  
19 offense where domestic violence has been pleaded and proven after  
20 August 1, 2011; and

1 (ii) A prior conviction for a repetitive domestic violence  
2 offense or domestic violence felony offense where domestic violence  
3 has been pleaded and proven after August 1, 2011.

4 (2) (~~(Misdemeanor)~~) Individuals convicted of misdemeanor and  
5 gross misdemeanor (~~(offenders)~~) offenses supervised by the department  
6 pursuant to this section shall be placed on community custody.

7 (3) The department shall supervise every individual convicted of  
8 a felony (~~(offender)~~) and sentenced to community custody pursuant to  
9 RCW 9.94A.701 or 9.94A.702 whose risk assessment classifies the  
10 (~~(offender)~~) individual as one who is at a high risk to reoffend.

11 (4) Notwithstanding any other provision of this section, the  
12 department shall supervise an (~~(offender)~~) individual sentenced to  
13 community custody regardless of risk classification if the  
14 (~~(offender)~~) individual:

15 (a) Has a current conviction for a sex offense or a serious  
16 violent offense and was sentenced to a term of community custody  
17 pursuant to RCW 9.94A.701, 9.94A.702, or 9.94A.507;

18 (b) Has been identified by the department as a dangerous mentally  
19 ill offender pursuant to RCW 72.09.370;

20 (c) Has an indeterminate sentence and is subject to parole  
21 pursuant to RCW 9.95.017;

22 (d) Has a current conviction for violating RCW 9A.44.132(1)  
23 (failure to register) and was sentenced to a term of community  
24 custody pursuant to RCW 9.94A.701;

25 (e)(i) Has a current conviction for a domestic violence felony  
26 offense where domestic violence has been pleaded and proven after  
27 August 1, 2011, and a prior conviction for a repetitive domestic  
28 violence offense or domestic violence felony offense where domestic  
29 violence was pleaded and proven after August 1, 2011. This subsection  
30 (4)(e)(i) applies only to offenses committed prior to July 24, 2015;

31 (ii) Has a current conviction for a domestic violence felony  
32 offense where domestic violence was pleaded and proven. The state and  
33 its officers, agents, and employees shall not be held criminally or  
34 civilly liable for its supervision of an (~~(offender)~~) individual  
35 under this subsection (4)(e)(ii) unless the state and its officers,  
36 agents, and employees acted with gross negligence;

37 (f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660,  
38 9.94A.670, or 9.94A.711;

39 (g) Is subject to supervision pursuant to RCW 9.94A.745; or

1 (h) Was convicted and sentenced under RCW 46.61.520 (vehicular  
2 homicide), RCW 46.61.522 (vehicular assault), RCW 46.61.502(6)  
3 (felony DUI), or RCW 46.61.504(6) (felony physical control).

4 (5) The department shall supervise any ~~((offender who is))~~  
5 individual released by the indeterminate sentence review board  
6 ~~((and))~~ who was sentenced to community custody or subject to  
7 community custody under the terms of release.

8 (6) The department shall supervise any individual granted  
9 conditional commutation pursuant to RCW 9.94A.885.

10 (7) The department is not authorized to, and may not, supervise  
11 any ~~((offender))~~ individual sentenced to a term of community custody  
12 or any probationer unless the ~~((offender))~~ individual or probationer  
13 is one for whom supervision is required under this section ~~((or RCW~~  
14 ~~9.94A.5011))~~.

15 ~~((7))~~ (8) The department shall conduct a risk assessment for  
16 every individual convicted of a felony ~~((offender))~~ and sentenced to  
17 a term of community custody who may be subject to supervision under  
18 this section ~~((or RCW 9.94A.5011))~~.

19 ~~((8))~~ (9) The period of time the department is authorized to  
20 supervise an ~~((offender))~~ individual under this section may not  
21 exceed the duration of community custody specified under RCW  
22 9.94B.050, 9.94A.701 (1) through (8), or 9.94A.702, except in cases  
23 where the court has imposed an exceptional term of community custody  
24 under RCW 9.94A.535.

25 ~~((9))~~ (10) The period of time the department is authorized to  
26 supervise an ~~((offender))~~ individual under this section may be  
27 reduced by the earned award of supervision compliance credit pursuant  
28 to RCW 9.94A.717.

29 **Sec. 2.** RCW 9.94A.565 and 1994 c 1 s 5 are each amended to read  
30 as follows:

31 (1) Nothing in this chapter ~~((1, Laws of 1994))~~ or chapter 10.95  
32 RCW shall ever be interpreted or construed as to reduce or eliminate  
33 the power of the governor to grant a pardon or clemency to any  
34 ~~((offender))~~ incarcerated individual on an individual case-by-case  
35 basis. However, the people recommend that ~~((any offender))~~ :

36 (a) Any incarcerated individual subject to total confinement for  
37 life without the possibility of parole not be considered for release  
38 until the ~~((offender))~~ incarcerated individual has ~~((reached the age~~  
39 ~~of at least sixty years old and has))~~ been judged to ~~((be))~~ no longer

1 ~~be~~ a threat to society(~~(. The people further recommend that sex~~  
2 ~~offenders)~~) and has served at least 20 years in total confinement or  
3 25 years in total confinement if the incarcerated individual was  
4 sentenced pursuant to chapter 10.95 RCW;

5 (b) Incarcerated individuals who have been convicted of a sex  
6 offense be held to the utmost scrutiny under this subsection  
7 regardless of age; and

8 (c) Release take the form of a conditional commutation that  
9 includes a period of law-abiding behavior in the community.

10 (2) Nothing in this section shall ever be interpreted or  
11 construed to grant any release for the purpose of reducing prison  
12 overcrowding. Furthermore, the governor shall provide twice yearly  
13 reports on the activities and progress of (~~offenders~~) individuals  
14 subject to total confinement for life without the possibility of  
15 parole who are released through executive action during his or her  
16 tenure. These reports shall continue for not less than (~~ten~~) 10  
17 years after the release of the (~~offender~~) individual or upon the  
18 death of the released (~~offender~~) individual.

19 **Sec. 3.** RCW 9.94A.633 and 2012 1st sp.s. c 6 s 2 are each  
20 amended to read as follows:

21 (1) (a) An (~~offender~~) individual who violates any condition or  
22 requirement of a sentence may be sanctioned by the court with up to  
23 (~~sixty~~) 60 days' confinement for each violation or by the  
24 department with up to (~~thirty~~) 30 days' confinement as provided in  
25 RCW 9.94A.737.

26 (b) In lieu of confinement, an (~~offender~~) individual may be  
27 sanctioned with work release, home detention with electronic  
28 monitoring, work crew, community restitution, inpatient treatment,  
29 daily reporting, curfew, educational or counseling sessions,  
30 supervision enhanced through electronic monitoring, or any other  
31 community-based sanctions.

32 (2) If an (~~offender~~) individual was under community custody  
33 pursuant to one of the following statutes, the (~~offender~~)  
34 individual may be sanctioned as follows:

35 (a) If the (~~offender~~) individual was transferred to community  
36 custody in lieu of earned early release in accordance with RCW  
37 9.94A.728, the (~~offender~~) individual may be transferred to a more  
38 restrictive confinement status to serve up to the remaining portion  
39 of the sentence, less credit for any period actually spent in

1 community custody or in detention awaiting disposition of an alleged  
2 violation.

3 (b) If the ((~~offender~~)) individual was sentenced under the drug  
4 offender sentencing alternative set out in RCW 9.94A.660, the  
5 ((~~offender~~)) individual may be sanctioned in accordance with that  
6 section.

7 (c) If the ((~~offender~~)) individual was sentenced under the  
8 parenting sentencing alternative set out in RCW 9.94A.655, the  
9 ((~~offender~~)) individual may be sanctioned in accordance with that  
10 section.

11 (d) If the ((~~offender~~)) individual was sentenced under the  
12 special sex offender sentencing alternative set out in RCW 9.94A.670,  
13 the suspended sentence may be revoked and the ((~~offender~~)) individual  
14 committed to serve the original sentence of confinement.

15 (e) If the ((~~offender~~)) individual was sentenced to a work ethic  
16 camp pursuant to RCW 9.94A.690, the ((~~offender~~)) individual may be  
17 reclassified to serve the unexpired term of his or her sentence in  
18 total confinement.

19 (f) If ((a)) an individual convicted of a sex ((~~offender~~))  
20 offense was sentenced pursuant to RCW 9.94A.507, the ((~~offender~~))  
21 individual may be transferred to a more restrictive confinement  
22 status to serve up to the remaining portion of the sentence, less  
23 credit for any period actually spent in community custody or in  
24 detention awaiting disposition of an alleged violation.

25 (g) If the individual was granted conditional commutation  
26 pursuant to RCW 9.94A.885, the individual may be transferred to a  
27 more restrictive confinement status to serve up to the remaining  
28 portion of the sentence, less credit for any period actually spent in  
29 community custody or in detention awaiting disposition of an alleged  
30 violation.

31 (3) If a probationer is being supervised by the department  
32 pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, the probationer may  
33 be sanctioned pursuant to subsection (1) of this section. The  
34 department shall have authority to issue a warrant for the arrest of  
35 an ((~~offender~~)) individual who violates a condition of community  
36 custody, as provided in RCW 9.94A.716. Any sanctions shall be imposed  
37 by the department pursuant to RCW 9.94A.737. Nothing in this  
38 subsection is intended to limit the power of the sentencing court to  
39 respond to a probationer's violation of conditions.

1 (4) The parole or probation of an ((~~offender~~)) individual who is  
2 charged with a new felony offense may be suspended and the  
3 ((~~offender~~)) individual placed in total confinement pending  
4 disposition of the new criminal charges if:

5 (a) The ((~~offender~~)) individual is on parole pursuant to RCW  
6 9.95.110(1); or

7 (b) The ((~~offender~~)) individual is being supervised pursuant to  
8 RCW 9.94A.745 and is on parole or probation pursuant to the laws of  
9 another state.

10 **Sec. 4.** RCW 9.94A.728 and 2018 c 166 s 2 are each amended to  
11 read as follows:

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

17 (a) An ((~~offender~~)) incarcerated individual may earn early  
18 release time as authorized by RCW 9.94A.729;

19 (b) An ((~~offender~~)) incarcerated individual may leave a  
20 correctional facility pursuant to an authorized furlough or leave of  
21 absence. In addition, ((~~offenders~~)) incarcerated individuals may  
22 leave a correctional facility when in the custody of a corrections  
23 officer or officers;

24 (c)(i) The secretary may authorize an extraordinary medical  
25 placement for an ((~~offender~~)) incarcerated individual when all of the  
26 following conditions exist:

27 (A) The ((~~offender~~)) incarcerated individual has a medical  
28 condition that is chronic or serious and is expected to require  
29 costly care or treatment;

30 (B) The ((~~offender poses a~~)) incarcerated individual has been  
31 assessed as low risk to the community ((~~because he or she is~~  
32 ~~currently physically incapacitated due to age or the medical~~  
33 ~~condition or is expected to be so~~)) at the time of release; and

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

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

1 (iii) The secretary shall require electronic monitoring for all  
2 ((~~offenders~~)) individuals in extraordinary medical placement unless  
3 the electronic monitoring equipment is detrimental to the  
4 individual's health, interferes with the function of the  
5 ((~~offender's~~)) individual's medical equipment, or results in the loss  
6 of funding for the ((~~offender's~~)) individual's medical care, in which  
7 case, an alternative type of monitoring shall be utilized. The  
8 secretary shall specify who shall provide the monitoring services and  
9 the terms under which the monitoring shall be performed. The  
10 requirement for electronic monitoring shall be waived if the medical  
11 condition as certified by the individual's treating physician  
12 prevents the individual from being independently mobile.

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

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

17 (d) The governor, upon recommendation from the clemency and  
18 pardons board, may grant ((~~an extraordinary~~)):

19 (i) Extraordinary release for reasons of serious health problems,  
20 senility, advanced age, extraordinary meritorious acts, or other  
21 extraordinary circumstances; or

22 (ii) Conditional commutation pursuant to section 7 of this act;

23 (e) No more than the final ((~~twelve~~)) 12 months of the  
24 ((~~offender's~~)) incarcerated individual's term of confinement may be  
25 served in partial confinement for aiding the ((~~offender~~))  
26 incarcerated individual with: Finding work as part of the work  
27 release program under chapter 72.65 RCW; or reestablishing himself or  
28 herself in the community as part of the parenting program in RCW  
29 9.94A.6551. This is in addition to that period of earned early  
30 release time that may be exchanged for partial confinement pursuant  
31 to RCW 9.94A.729(5)(d);

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

36 (g) The governor may pardon any ((~~offender~~)) incarcerated  
37 individual;

38 (h) The department may release an ((~~offender~~)) incarcerated  
39 individual from confinement any time within ((~~ten~~)) 10 days before a  
40 release date calculated under this section;

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

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

10 (k) Any (~~person~~) individual convicted of one or more crimes  
11 committed prior to the person's (~~eighteenth~~) 18th birthday may be  
12 released from confinement pursuant to RCW 9.94A.730.

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

16 **Sec. 5.** RCW 9.94A.880 and 2011 c 336 s 335 are each amended to  
17 read as follows:

18 (1) The clemency and pardons board is established as a board  
19 within the office of the governor. The board consists of (~~five~~) 10  
20 members appointed by the governor, subject to confirmation by the  
21 senate.

22 (2) Board membership must consist of the following:

23 (a) A representative of a statewide or local organization  
24 representing communities of color or race equity;

25 (b) A representative of an agency representing crime victims;

26 (c) A representative of an association, community organization,  
27 or advocacy group with experience or interest in the formerly  
28 incarcerated with successful community reentry;

29 (d) A representative of a faith-based organization with interest  
30 and experience in successful community reentry;

31 (e) A representative of a statewide organization representing  
32 criminal defense lawyers;

33 (f) A law enforcement professional;

34 (g) A representative of a statewide organization representing  
35 prosecuting attorneys;

36 (h) A person with experience and interest in tribal affairs;

37 (i) A behavioral health professional; and

38 (j) A retired superior court judge.



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

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

10 (~~(3)~~) (5) The board shall elect a chair from among its members  
11 and shall adopt bylaws governing the operation of the board.

12 (~~(4)~~) (6) Members of the board shall (~~receive no compensation~~  
13 but shall be reimbursed for travel expenses as provided in RCW  
14 43.03.050 and 43.03.060 as now existing or hereafter amended) each  
15 severally receive salaries fixed by the governor in accordance with  
16 the provisions of RCW 43.03.040, unless waived by the member. All  
17 members shall receive travel expenses incurred in the discharge of  
18 their official duties in accordance with RCW 43.03.050 and 43.03.060.

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

22 (~~(5)~~) (8) The attorney general shall provide (~~a staff as~~  
23 needed for the operation of) legal counsel to the board.

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

26 (1) The clemency and pardons board shall receive petitions from  
27 individuals, organizations, and the department and make  
28 recommendations to the governor for (~~review and commutation~~):

29 (a) Commutation of sentences and pardoning of (~~offenders~~)  
30 incarcerated individuals in extraordinary cases(~~(7)~~); and (~~shall~~  
31 make recommendations thereon to the governor)

32 (b) Conditional commutation of sentences pursuant to section 7 of  
33 this act.

34 (2) The board shall receive petitions from individuals or  
35 organizations for the restoration of civil rights lost by operation  
36 of state law as a result of convictions for federal offenses or out-  
37 of-state felonies. The board may issue certificates of restoration  
38 limited to engaging in political office. Any certifications granted  
39 by the board must be filed with the secretary of state to be

1 effective. In all other cases, the board shall make recommendations  
2 to the governor.

3 (3) The board shall not recommend that the governor grant  
4 clemency or conditional commutation under subsection (1) of this  
5 section until a public hearing has been held on the petition. The  
6 board shall consider statements of victims and survivors of victims  
7 presented as set forth in RCW 7.69.032, as well as any statements  
8 from the law enforcement agency or agencies that conducted the  
9 investigation.

10 (4)(a) The prosecuting attorney of the county where the  
11 conviction was obtained shall be notified at least (~~thirty~~) 90 days  
12 prior to the scheduled hearing that a petition has been filed and the  
13 date and place at which the hearing on the petition will be held. The  
14 board may waive the (~~thirty-day~~) 90-day notice requirement in cases  
15 where it determines that waiver is necessary to permit timely action  
16 on the petition. A copy of the petition shall be sent to the  
17 prosecuting attorney. (~~The prosecuting attorney shall make~~  
18 ~~reasonable efforts to notify victims, survivors of victims,~~  
19 ~~witnesses, and the law enforcement agency or agencies that conducted~~  
20 ~~the investigation, of the date and place of the hearing.))~~

21 (b) To facilitate victim and survivor of victim involvement,  
22 county prosecutor's offices shall make reasonable efforts to ensure  
23 that any victim impact statements and known contact information for  
24 victims of record and survivors of victims are forwarded as part of  
25 the judgment and sentence. In the event that no known victim or  
26 survivor of the victim is known or identified for the panel, the  
27 county prosecutor's office shall be given reasonable time to certify  
28 to the panel that it has exhausted all reasonable efforts in locating  
29 and providing contact information to the panel. Information regarding  
30 victims, survivors of victims, or witnesses receiving this notice are  
31 confidential and shall not be available to the (~~offender~~)  
32 incarcerated individual seeking clemency or commutation. (~~The board~~  
33 ~~shall consider statements presented as set forth in RCW 7.69.032.))~~

34 (c) This subsection is intended solely for the guidance of the  
35 board. Nothing in this section is intended or may be relied upon to  
36 create a right or benefit, substantive or procedural, enforceable at  
37 law by any person.

38 (5)(a) The board may recommend conditions of commutation for any  
39 incarcerated individual released pursuant to this section, including  
40 a term of community custody up to the length of the court-imposed

1 term of incarceration, partial confinement up to six months,  
2 restrictions on travel, no contact with certain persons or classes of  
3 persons, restrictions on the type of employment and any other  
4 restrictions that the board determines to be reasonable and  
5 appropriate, or any other condition which provides for community  
6 protection from the released individual.

7 (b) The department shall monitor the released individual's  
8 compliance with conditions of community custody imposed by the court  
9 or recommended by the board. Any violation of conditions of community  
10 custody is subject to the provisions of this chapter.

11 (6) Once granted, the governor may not revoke an order granting  
12 conditional commutation.

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

15 NEW SECTION. Sec. 7. A new section is added to chapter 9.94A  
16 RCW to read as follows:

17 (1) Notwithstanding any other provision of this chapter, an  
18 incarcerated individual may petition the board for conditional  
19 commutation if the incarcerated individual:

20 (a) Is not subject to the jurisdiction of the indeterminate  
21 sentence review board pursuant to RCW 9.94A.730 or 9.94A.507, or the  
22 incarcerated individual's offense was committed prior to July 1,  
23 1984;

24 (b) Has served at least 20 consecutive years of total confinement  
25 except:

26 (i) An incarcerated individual who was sentenced as a persistent  
27 offender that included a conviction for robbery in the second degree  
28 as their third conviction towards being designated as a persistent  
29 offender may petition after serving 15 consecutive years of total  
30 confinement; and

31 (ii) An incarcerated individual sentenced pursuant to chapter  
32 10.95 RCW may petition only after serving 25 consecutive years of  
33 total confinement;

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

36 (d) Does not have any current appeals pending or collateral  
37 attacks pending on the case for which the incarcerated individual is  
38 seeking conditional commutation.

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

4 (a) Notify the incarcerated individual regarding his or her  
5 eligibility under this section; and

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

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

18 (4) No later than 180 days from the date that the incarcerated  
19 individual submits his or her petition for conditional commutation to  
20 the board, the department shall conduct, and the incarcerated  
21 individual shall participate in, an examination of the incarcerated  
22 individual, incorporating methodologies that are evidence-based,  
23 normed on the specific gender of the incarcerated individual, and  
24 recognized by experts in the prediction of dangerousness, and  
25 including a prediction of the probability that the incarcerated  
26 individual will engage in future criminal behavior if released on  
27 conditions to be set by the board. The board may consider a  
28 incarcerated individual's failure to participate in an evaluation  
29 under this subsection in determining whether to release the  
30 incarcerated individual.

31 (5) The board shall recommend the incarcerated individual be  
32 released under such affirmative and other conditions as the panel  
33 determines appropriate, unless the panel determines by a  
34 preponderance of the evidence that, despite such conditions, it is  
35 more likely than not that the incarcerated individual will commit new  
36 criminal law violations if released.

37 (6) The board may take any of the following actions: Deny a  
38 petition without a hearing because the incarcerated individual does  
39 not meet the initial criteria for filing a petition; or conduct a  
40 hearing in accordance with RCW 9.94A.885 to consider additional

1 information, and then deny the petition or recommend conditional  
2 commutation to the governor.

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

5 (a) Public safety;

6 (b) The incarcerated individual's criminal history;

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

9 (d) The incarcerated individual's social and medical history;

10 (e) The incarcerated individual's acceptance of responsibility,  
11 remorse, and atonement. If the individual submitted an Alford plea,  
12 the impact that may have on an individual's ability to provide  
13 evidence of remorse, atonement, and self-reflection in relation to  
14 the offense committed;

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

19 (g) Statements of correctional staff, program supervisors, and  
20 volunteer facilitators regarding the incarcerated individual;

21 (h) Input from the victims of the crime;

22 (i) Input from the police and prosecutors in the jurisdictions  
23 where the incarcerated individual's crimes were committed;

24 (j) Input from persons in the community pledging their support of  
25 the incarcerated individual, if released;

26 (k) The available resources in the community to help the  
27 incarcerated individual transition to life outside of prison;

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

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

32 (n) Any other relevant factors.

33 (8) Further, the board shall consider a release plan presented by  
34 the incarcerated individual showing where the incarcerated individual  
35 will reside and how he or she will support himself or herself during  
36 the first year after his or her release. The department shall  
37 independently review the proposed release plan and make an  
38 independent evaluation to ensure the incarcerated individual is not  
39 released to an area where the victim resides or that impacts  
40 community safety.

1 (9) If the board recommends commutation or denies the petition,  
2 it shall specify the reasons for the decision.

3 (10) The conditions for conditional commutation may include:  
4 Partial confinement for up to six months, regular drug and/or alcohol  
5 testing, no violations of law, restrictions on travel, no contact  
6 with certain individuals or classes of individuals, restrictions on  
7 the type of employment and any other restrictions that the board  
8 determines to be reasonable and appropriate, or any other condition  
9 which provides for community protection from the released individual.

10 (11) An incarcerated individual whose petition for conditional  
11 commutation is denied may file a new petition for conditional  
12 commutation three years from the date of denial or at an earlier date  
13 as may be set by the board.

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

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

20 (14) The board may adopt rules setting out criteria and  
21 procedures for the review of petitions under this section and RCW  
22 9.94A.885 as appropriate.

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

25 NEW SECTION. **Sec. 8.** (1) Chapter 187, Laws of 2019 removed  
26 robbery in the second degree as a most serious offense in sentencing  
27 an individual as a persistent offender. At that time, the legislature  
28 declined to require resentencing of incarcerated individuals serving  
29 a life sentence as the result of a conviction for robbery in the  
30 second degree. The legislature recognizes the need to balance  
31 considerations that may have gone into the original charging decision  
32 and the inequities that may have resulted from including robbery in  
33 the second degree as a third strike offense.

34 (2) In exercising its duties under RCW 9.94A.885 and section 7 of  
35 this act, the clemency and pardons board shall give priority  
36 consideration to incarcerated individuals who petition for  
37 conditional commutation and who have a current or past conviction for  
38 robbery in the second degree that was used as a basis for a finding  
39 that the incarcerated individual was a persistent offender.

1 (3) This section expires December 31, 2024.

--- **END** ---