

# HOUSE BILL REPORT

## HB 1640

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**As Reported by House Committee On:**  
Community Safety, Justice, & Reentry

**Title:** An act relating to the governor's authority to grant pardons and commutations.

**Brief Description:** Concerning the governor's authority to grant pardons and commutations.

**Sponsors:** Representatives Street, Santos, Mena, Doglio, Senn, Reed, Berry, Farivar, Simmons, Cortes, Ryu, Lekanoff, Ramel, Gregerson, Bateman, Pollet, Morgan, Macri, Fosse and Kloba.

**Brief History:**

**Committee Activity:**

Community Safety, Justice, & Reentry: 2/6/23, 2/14/23 [DP].

**Brief Summary of Bill**

- Modifies certain provisions related to the scope of the Governor's constitutional and statutory authority to grant pardons and commutations.

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### HOUSE COMMITTEE ON COMMUNITY SAFETY, JUSTICE, & REENTRY

**Majority Report:** Do pass. Signed by 6 members: Representatives Goodman, Chair; Simmons, Vice Chair; Davis, Farivar, Fosse and Ramos.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Mosbrucker, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Graham.

**Staff:** Corey Patton (786-7388).

**Background:**

Article III, section 9 of the Washington Constitution provides the Governor with the

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authority to grant pardons, subject to such regulations and restrictions as may be prescribed by law. State law contains a number of statutory provisions related to the Governor's authority to grant pardons and commutations including, for example, the following:

- The Governor may pardon any offender serving a sentence in the custody of the Department of Corrections (DOC).
- The Governor, upon recommendation from the Clemency and Pardons Board (CPB), may grant a person serving a sentence in the custody of the DOC an extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances.
- The Persistent Offender Accountability Act may not be interpreted or construed as to reduce or eliminate the power of the Governor to grant a pardon or clemency to any offender on an individual case-by-case basis.
- When a prisoner has been sentenced to death, the Governor may commute such sentence to imprisonment for life, and in all cases in which the Governor is authorized to grant pardons or commute sentence of death, the Governor may, upon the petition of the person convicted, commute a sentence or grant a pardon upon such conditions, restrictions, and limitations as the Governor may think proper.

The CPB receives petitions for pardons and commutations and makes recommendations on those petitions to the Governor. The CPB receives staff support from the Office of the Attorney General and conducts hearings on a quarterly basis, or as needed, to review petitions. The CPB generally only reviews and hears petitions in cases where judicial remedies have been exhausted. The Governor makes the final decision in all petitions heard by the CPB.

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### **Summary of Bill:**

Statutory provisions related to the Governor's authority to grant pardons and commutations are modified as follows:

- The reference to the Clemency and Pardons Board's role in making recommendations to the Governor is eliminated from the provision related to granting extraordinary release to a person serving a sentence in the custody of the Department of Corrections (DOC). Instead, the Governor may grant a person serving a sentence in the custody of the DOC an extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances.
- The reference to granting a pardon or clemency on an individual case-by-case basis is eliminated from the provision related to interpreting the Persistent Offender Accountability Act (POAA). Instead, the POAA may not be interpreted or construed as to reduce or eliminate the power of the Governor to grant a pardon or clemency to any offender.
- The provision related to pardons and commutations for death sentences may not be interpreted to limit the Governor's authority to grant a pardon or commutation for a sentence, other than a death sentence, regardless of whether the Governor receives a

petition from the person convicted.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) The Governor should not be limited to considering pardons and commutations on the basis of petitions, especially with regard to incarcerations that do not serve the public interest. For example, the Governor did not grant mass commutations in response to the Washington Supreme Court's decision in *State v. Blake*, which necessitated efforts from public defenders to identify who was affected by the decision and organize individual petitions. Those commutations should have been granted all at once with the stroke of a pen, rather than granted one at a time. This bill preemptively addresses the potential for useless litigation and makes sure that the Governor can grant mass pardons without the need for people to petition him individually.

Once a conviction is finalized, there is little opportunity to revisit it unless there is newly discovered evidence. For many individuals, there are no available judicial proceedings that could provide the sought relief. The only alternative is seeking a pardon or clemency from the Governor, which is not an avenue that is typically available. This bill could help facilitate claims of true, actual innocence that otherwise lack a clear pathway.

The provision in this bill related to extraordinary releases corrects a problem in cases where a person seeks clemency based on a physical or mental health condition. If such a person brings forward a concern too soon, release might be denied because the person's condition isn't considered extraordinary enough. However, if the person brings the concern too late, the person might already be suffering too much for the release to be meaningful.

(Opposed) The Legislature should retain its inherent and appropriate power to regulate the Governor's pardon authority. Such regulations ensure that the Governor doesn't drop the mic on the way out of office. Just as sentencings are conducted individually, pardons should also be based on individualized determinations. People who were only impacted by marijuana possession convictions should not still be in prison at this point.

**Persons Testifying:** (In support) Representative Chipalo Street, prime sponsor; Larry Jefferson, Washington State Office of Public Defense; Jeffrey Ellis, Redemption Project of Washington; and Lara Zarowsky, Washington Innocence Project.

(Opposed) James McMahan, Washington Association of Sheriffs and Police Chiefs.

**Persons Signed In To Testify But Not Testifying:** None.