

HOUSE BILL REPORT

HB 1131

As Reported by House Committee On:

Community Safety
Appropriations

Title: An act relating to clemency and pardons.

Brief Description: Concerning clemency and pardons.

Sponsors: Representatives Goodman, Hackney, Simmons, Wylie, Ormsby and Hill.

Brief History:

Committee Activity:

Community Safety: 1/16/25, 1/23/25 [DPS];

Appropriations: 2/17/25, 2/20/25 [DP2S(w/o sub CS)].

Brief Summary of Second Substitute Bill

- Expands and modifies the membership, compensation, and training requirements for the Clemency and Pardons Board.
- Requires the Department of Corrections to supervise a person granted conditional commutation if community custody is a condition of the commutation.

HOUSE COMMITTEE ON COMMUNITY SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Goodman, Chair; Simmons, Vice Chair; Davis, Fosse and Obras.

Minority Report: Do not pass. Signed by 1 member: Representative Graham, Ranking Minority Member.

Minority Report: Without recommendation. Signed by 2 members: Representatives

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Griffey, Assistant Ranking Minority Member; Burnett.

Staff: Lena Langer (786-7192).

Background:

Pardons and Commutations.

The Governor has the constitutional and statutory authority to issue pardons and commute sentences. A pardon is generally a government decision to allow a person to be absolved of guilt for a crime and restores the person's civil rights. A commutation of a sentence is a reduction in sentence, usually to time served.

Clemency and Pardons Board.

The Clemency and Pardons Board (CPB) was established to make recommendations to the Governor concerning petitions for clemency. The CPB receives petitions from individuals, the Department of Corrections (DOC), and organizations for commutations of sentences and pardons of convictions, and makes recommendations on those petitions to the Governor. The Governor makes the final decision in all cases heard by the CPB.

The CPB consists of five members appointed by the Governor and subject to confirmation by the Senate. Members serve four-year terms or until their successors are appointed, and members do not receive compensation but are reimbursed for travel expenses. The CPB receives staff support from the Office of the Attorney General and holds regular quarterly meetings, but can call special meetings at other times when appropriate.

The CPB generally reviews and hears petitions for pardon or commutation only in cases in which judicial remedies for the conviction have been concluded or exhausted. In most cases, absent unique or emergency circumstances, the CPB will not consider a petition until at least 10 years have passed from the date of conviction. In addition, the CPB does not hear new petitions from the same individual on the same matter until three years have elapsed from the date of the previous hearing, unless there are exceptional circumstances or new information not previously considered by the CPB. Initiative No. 593 contains a provision recommending that the CPB and the Governor not consider a petition for commutation from a person with a life sentence under the three strikes law until the person is at least age 60 and has been judged to no longer be a threat to society.

After receiving a petition, the CPB evaluates whether the petitioner's request merits a hearing. If a hearing is determined to be appropriate, the CPB must provide the relevant county prosecuting attorney with 30 days advance notice. After the hearing, the CPB votes on a recommendation, which is then forwarded to the Governor. The Governor is under no legal obligation to follow the recommendation. If the Governor grants a pardon, the person's conviction will be removed from the petitioner's criminal history available to the public. The Governor can place conditions on the pardon, such as requiring a conviction-free record for a specified period of time. A commutation results in a reduction of criminal

penalties and is often conditional.

Community Custody.

Community custody is the portion of a person's criminal sentence served in the community under the supervision of the DOC following release from confinement in a state correctional facility. While on community custody, a person is subject to conditions imposed by the DOC, the sentencing court, and the Indeterminate Sentence Review Board (ISRB) in certain circumstances. The Secretary of the DOC may issue a warrant for the arrest of any person who violates a condition of community custody. A person who violates a condition may be subject to sanctions.

Summary of Substitute Bill:

The Clemency and Pardons Board.

The CPB makes recommendations to the Governor for:

- commutation of sentences of incarcerated individuals when the sentence no longer serves the interest of justice; and
- pardoning of individuals in extraordinary cases.

The CPB is expanded from 5 to 10 members appointed by the Governor, who are subject to confirmation by the Senate. The Governor must strive to ensure racial, ethnic, geographic, gender, sexual identity, and age diversity in the appointments. The CPB membership must consist of:

- a person with lived experience in a community of color;
- a person with lived experience as an incarcerated individual, or has worked with the formerly incarcerated or successful community reentry;
- a representative of a faith-based organization or church with interest or experience in community reentry;
- a person with experience and interest in tribal affairs; and
- a representative of crime victims.

Terms are expanded from four to five years, and members are limited to two consecutive terms. The initial terms must be staggered so no more than three members are up for appointment in any given year. Members must receive compensation up to \$100 per day, unless waived by the person, and be compensated for time spent for training, hearing preparation, and travel expenses. The CPB members must attend training related to race equity, racism, and restorative justice at least every two years. Current members may serve the remainder of their term. Each petition for commutation or pardon must be reviewed by a panel of five board members. The panel membership must be selected by a random drawing conducted by the CPB staff. The Attorney General's Office must provide legal counsel to the CPB.

The CPB must provide the relevant county prosecuting attorney with 90 days, rather than 30

days, of advance notice of a scheduled hearing that a petition has been filed and the date and place at which the hearing will be held.

The CPB must submit a report at least annually to the Governor and the Legislature. The report must include:

- the names and convictions of the persons granted commutation or a pardon in the previous calendar year; and
- any known acts of recidivism during the preceding calendar year by any person granted commutation or a pardon and listed in a previous report submitted by the CPB.

Supervision.

The DOC must supervise any person granted a conditional commutation by the Governor if community custody is a condition of commutation. If a person violates a condition of community custody, the person may be transferred to a more restrictive confinement status to serve the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of the alleged violation.

Substitute Bill Compared to Original Bill:

The word "offender" is replaced with "individual" in the provision requiring the Clemency and Pardons Board to submit reports to the Governor and the Legislature.

Appropriation: None.

Fiscal Note: Requested on January 9, 2025.

Effective Date of Substitute Bill: The bill contains multiple effective dates. Please see the bill.

Staff Summary of Public Testimony:

(In support) The bill does not change how the CPB operates. The bill expands the membership of the CPB so that more petitions may be considered. There is greater confidence in the clemency and pardons process than any other form of midsentence review. The bill adds community voices to the CPB. The community decides when you go to prison and the community should decide when you come back early from prison. Clemency should be granted when the sentence no longer serves the interest of justice. Prosecutors follow the same standard when they move the court to reduce a sentence because it no longer serves the interest of justice. The bill today is codifying the CPB's current practice of recommending commutation when sentences no longer serve the interest of justice. Increasing the size of the CPB from 5 to 10 members will allow them to do their work more efficiently. Petitioners are currently waiting more than a year to have their

petition heard. Extraordinary circumstances and interest of justice are both difficult to define, but whether or not the standard is changed, all petitions will continue to be rigorously reviewed by the CPB and the Governor. The clemency and pardons review is a very rigorous and deliberative process. In 12 years, Governor Inslee commuted the sentences of, or pardoned, 100 to 110 people. Currently, the Governor grants conditional commutation. People who are granted commutations have three years of community custody. These people are very closely monitored by the DOC. The Governor takes the clemency and pardons standard very seriously.

(Opposed) There is support for the extension from 30 to 90 days to provide notice to the prosecutor of a hearing. There is support for expanding the Board. There is concern about listing the specific background of people that must be appointed as members. If backgrounds are listed, there should be more balance. Or, backgrounds should not be specified and the Governor should be open to select who is appropriate to serve on the CPB. The second concern is on the language change that provides that a conditional commutation can be in the interest of justice. There is concern that this means that it is a case that is less than extraordinary. Every person convicted of a criminal offense in this state has been done so through a process. Every person is redeemable. There should be a process to acknowledge this. There is confusion about including conditional commutations in the bill, but there are also claims that the Governor has this authority. There is opposition to expanding the Board membership. Doubling the size of the Board would create constituencies or caucuses, which is not in the interest of justice. Also, crime victims and actual members of the CPB have not been included in the conversations about this bill and need to be included.

Increasing membership and diverse members of the CPB is important. We need to incentivize persons who are serving life without parole. The CPB does not review these cases. The clemency process is a good process and the bill is good, but these types of cases should come under the Board's jurisdiction. Further, the CPB members need to be trained on evidence-based decision making, like the ISRB.

(Other) There is support for adding members with lived experiences to the CPB and for compensating the Board. There are concerns about the language that requires certain backgrounds of some members, and this should be amended to allow more flexibility with appointments. Gender equity training should be required for the members. There is a concern that the bill language undermines providing staff support to the Board. There should not be a required minimum number of Board members to hold a hearing.

Persons Testifying: (In support) Representative Roger Goodman, prime sponsor; Waldo Waldron-Ramsey, Washington Community Action Network; and Barbara Serrano, Former Senior Policy Advisor on Public Safety—Governor Inslee.

(Opposed) Russell Brown, WA Association of Prosecuting Attorneys; Tom Sahlberg, City of Liberty Lake; and James McMahan, WA Assoc Sheriffs and Police Chiefs.

(Other) Cindy Arends, Washington Defender Assn, WA Assn Criminal Defense Attorneys.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Community Safety. Signed by 19 members: Representatives Ormsby, Chair; Gregerson, Vice Chair; Macri, Vice Chair; Berg, Bergquist, Callan, Cortes, Doglio, Fitzgibbon, Leavitt, Lekanoff, Peterson, Pollet, Ryu, Springer, Stonier, Street, Thai and Tharinger.

Minority Report: Do not pass. Signed by 12 members: Representatives Couture, Ranking Minority Member; Connors, Assistant Ranking Minority Member; Penner, Assistant Ranking Minority Member; Schmick, Assistant Ranking Minority Member; Burnett, Caldier, Corry, Dye, Keaton, Manjarrez, Marshall and Rude.

Staff: Sydney Jeffrey (786-7303).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Community Safety:

The Appropriations Committee recommended adding a null and void clause, making the bill null and void unless funded in the budget.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill contains multiple effective dates. Please see the bill. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) Expansion of the Clemency and Pardons Board (Board) membership to include community members is a reasonable change, as community members should have a say in whether an individual is released into the community before their sentence is complete. Additionally, not everyone in a community may have the means to spend the time on the Board in the absence of compensation. Therefore, the minor compensation and travel reimbursement that the board members will receive are justified.

The work of the Board is cost effective. The cost for the Department of Corrections (DOC) to monitor an individual on community custody is substantially less per year than the cost to

house an individual at a DOC facility, which costs an average of \$75,000 per year. Not only does clemency and pardons benefit the state fiscally, but it also has a positive behavioral impact on people's lives when they have a goal to reach towards while incarcerated.

(Opposed) Discomfort pertaining to portions of the bill are expressed. Section 7(2) of the bill creates constituencies of those members who serve the Board because of mandated demographic requirements of the board. The Governor should appoint a balanced cohort of individuals to the Board without constituencies that board members may feel obligated to consider when making recommendations. The Board already has clear policies and guidelines on the existing provisions that should remain the same; however, Section 8(1) of the bill changes existing criteria by which the board makes their recommendations. Also, absent from the discussion of the bill is the Board itself and their thoughts and opinions should be considered.

Additional provisions could be included in the bill to make it even more beneficial or effective to the target population. The Legislature could create a clear path towards clemency for incarcerated individuals that starts the day an individual is incarcerated. Incarcerated individuals should be made aware of this potential path and be provided a road map and resources to assist them in their path towards applying for clemency. Such provisions would likely have a much greater fiscal impact than the proposed legislation. Closer to the intent of the legislation being heard, the Legislature should consider expanding board membership further to include, not just members of the community, but also people with experience in the system. The term "instances of justice" is currently used by prosecutors and its use in the bill should be reconsidered.

Persons Testifying: (In support) Anthony Powers, President, American Equity Consulting; and Waldo Waldron-Ramsey, Political Director, Washington Community Action Network.

(Opposed) James McMahan, Washington Association Sheriffs and Police Chiefs; and Russell Brown, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.