

SENATE BILL REPORT

E2SHB 1131

As Reported by Senate Committee On:
Human Services, March 25, 2025
Ways & Means, April 7, 2025

Title: An act relating to clemency and pardons.

Brief Description: Concerning clemency and pardons.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Goodman, Hackney, Simmons, Wylie, Ormsby and Hill).

Brief History: Passed House: 3/7/25, 52-44.

Committee Activity: Human Services: 3/18/25, 3/25/25 [DPA, DNP, w/oRec].
Ways & Means: 4/04/25, 4/07/25 [DPA, DNP].

Brief Summary of Amended Bill

- Expands the membership of the Clemency and Pardons Board (Board).
- Increases compensation, and training requirements for members of the Board.
- Authorizes a person granted conditional commutation to be supervised by the Department of Corrections for a period of community custody.

SENATE COMMITTEE ON HUMAN SERVICES

Majority Report: Do pass as amended.

Signed by Senators Wilson, C., Chair; Frame, Vice Chair; Orwall.

Minority Report: Do not pass.

Signed by Senator Christian, Ranking Member.

Minority Report: That it be referred without recommendation.

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.

Signed by Senator Warnick.

Staff: Will Trondsen (786-7552)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Robinson, Chair; Stanford, Vice Chair, Operating; Trudeau, Vice Chair, Capital; Frame, Vice Chair, Finance; Cleveland, Conway, Dhingra, Hansen, Hasegawa, Kauffman, Pedersen, Riccelli, Saldaña, Wellman and Wilson, C..

Minority Report: Do not pass.

Signed by Senators Gildon, Ranking Member, Operating; Torres, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Dozier, Assistant Ranking Member, Capital; Braun, Muzzall, Wagoner and Warnick.

Staff: Kimmy Eide (786-7471)

Background: Clemency and Pardons Board. The Washington State Constitution grants the Governor the authority to pardon individuals convicted of a state criminal offense. In 1981, the Legislature established the Clemency and Pardons Board (Board) within the Office of the Governor. The Board consists of five members appointed by the Governor. Each member serves a four-year term or until their successor is appointed, and members do not receive compensation for their time while performing official duties but are reimbursed for travel expenses. The Board receives petitions from individuals, organizations, and the Department of Corrections (DOC) for commutation of sentences and pardons of offenders' convictions, and makes recommendations on those petitions to the Governor. This process of reviewing an application for a commutation or pardon is to gather facts necessary to assist the Governor in executing the power to pardon or commute a sentence.

The Board reviews and hears petitions for pardon or commutation only in cases in which judicial remedies for the conviction have been concluded to a final decision. The Board considers all written materials submitted in support or opposition to the petition. According to the policy of the Board, consideration of a commutation or pardon is on the existence or nonexistence of extraordinary circumstances pursuant to statute. The statute does not define extraordinary; petitioners are encouraged to provide examples of factors and circumstances warranting relief, such as:

- the seriousness of the offense;
- the impact on the victims;
- significant and documented need for clemency;
- acceptance of responsibility, remorse, and atonement;
- personal development and positive life changes since the offense occurred;
- the offender's criminal history and other relevant background;
- whether the individual has complied with all obligations imposed by the court;

- the amount of time elapsed since the offense occurred; or
- the risk or benefit to the community.

Notice of a hearing on the petition is provided to the prosecuting attorney of the county where the conviction was obtained at least 30 days prior to the hearing, and the prosecuting attorney in turn notifies the victims and survivors of the victims so they may participate in the hearing. After considering the petition, the Board votes on a recommendation, and the Governor is under no obligation to follow the recommendation. If the Governor grants a pardon, the individual's conviction will be removed from the the petitioner's criminal history. A pardon may be conditional, 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.

Initiative 593. Approved by the citizens of Washington State, Initiative 593 contains a section that provides a recommendation that an individual subject to total confinement for life without the possibility of parole not be considered for release until they have reached the age of 60 years-old and are judged to be no longer a threat to society.

Community Custody. A portion of an individual's criminal sentence may be served in the community under the supervision of DOC following, or in lieu of, a term of confinement in a state correctional facility or local jail. A term of community custody is ordered by the court, and varies based on the crime of conviction. An individual on community custody is subject to conditions set by the court, DOC, or in some cases the indeterminate sentencing review board. If a person violates the conditions of community custody, a warrant can be issued, and they may be subject to a sanction.

Summary of Amended Bill: The Clemency and Pardons Board. The Board is expanded from five members to ten members. Members may serve up to two terms, and terms are extended from four years to five years. Appointment of board members must be staggered so as not to include more than three members appointed in any given year. Compensation for members, which may be waived by the member, may not exceed \$100 per day during which the member attends an official meeting of the Board or performs their prescribed duties. Travel expenses incurred in discharge of official duties for lodging, mileage, and subsistence are paid pursuant to state law. Board members must attend training related to the principles of racial equity, racism, and restorative justice at least every two years. The attorney general is required to staff and provide legal counsel to the board.

Members of the board must include:

- person from an underrepresented population with direct lived experience, as defined in RCW 43.18A.010;
- person with lived experience as an incarcerated individual or who has worked with the formerly incarcerated or successful community reentry;
- representative of a faith-based organization or church with interest or experience in successful community reentry;

- person with experience and interest in tribal affairs; and
- two representatives of crime victims.

Review of Petition. The recommendation is removed from Initiative 593 that an individual subject to total confinement be at least 60 years-old before being considered for release. Each petition for pardon or commutation must be reviewed by a panel of five Board members, randomly drawn by Board staff. If a petitioner indicates in the petition an urgent need for the pardon or commutation including, but not limited to, a pending deportation order or deportation proceeding, the Board shall consider expedited review of the application.

Notification of Petition. The local prosecutor must be notified at least 90 days prior to the scheduled hearing on the filed petition unless the board waives the requirement when waiver is necessary to permit timely action on the petition.

Conditional Commutation. DOC is required to supervise any individual granted conditional commutation if the Governor includes a term of community custody as a condition of commutation. It is recommended that (1) any incarcerated person subject to total confinement not be considered for release until the incarcerated individual has been judged to no longer be a threat to society, (2) incarcerated individuals who have been convicted of a sex offense be held to the upmost scrutiny regardless of age, and (3) release takes the form of a commutation that includes a period of law-abiding behavior in the community. A violation of the community custody condition of a commutation permits the individual to be transferred to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation.

Annual Report. The Board must transmit a report of its work annually to the Governor and the Legislature. Information in the report must include the names of any individuals granted commutation or a pardon from the previous calendar year, the crimes in which those individuals were convicted, and any known acts of recidivism during the preceding calendar year of individuals listed in any previous report submitted by the Board.

Other. References to offender are changed to individuals throughout the bill. The bill specifies that an applicant is eligible for a pardon, commutation, or restoration of civil rights without regard to his or her immigration status.

EFFECT OF WAYS & MEANS COMMITTEE AMENDMENT(S):

- Restores current law requiring the Office of the Attorney General provide staff to the Clemency and Pardons Board.
- Allows any applicant to be eligible for a pardon, commutation, or restoration of civil rights regardless of the person's immigration status.
- Requires the Clemency and Pardons Board create an expedited review of a petition

for a pardon or commutation if the petitioner indicates an urgent need based on a pending deportation order or deportation proceeding.

EFFECT OF HUMAN SERVICES COMMITTEE AMENDMENT(S):

- Removes the requirement that a board member be someone with lived experience in a community of color and requires the member to be a person from an underrepresented population with direct lived experience.
- Defines "direct lived experience" and "underrepresented population" with same definition in RCW 43.18A.010.

Appropriation: The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Engrossed Second Substitute House Bill (Human Services): *The committee recommended a different version of the bill than what was heard.* PRO: This bill doubles the Clemency and Pardons Board (Board) membership size, and the previous biennium the Legislature already appropriated funds for extended staff support of the Board. There is very little cost in this bill and it may allow the Board to consider almost quadruple the number of cases on an annual basis. It should be a goal to expand the number of petitions that can be reviewed.

The membership requirements ensure that some of the members have a lived experience in the criminal legal system and their perspective is incredibly important. The bill very carefully keeps a pardon at the extraordinary standard, and changes the commutation standard to in the interest of justice, which is more appropriate since it is like a resentencing. It's the same standard that prosecutors use when seeking a resentencing that was clearly excessive. The community should have a say on whether or not someone should be released before their sentence is up. This bill simply codifies the commutation process to ensure that it is clear to the public and everyone has an understanding of the standard used.

In current practice, petitioners are waiting nearly a year or more just to have their initial petition reviewed. A single petition can be hundreds of pages long and usually takes four to eight hours to review. Each time a petition is reviewed a number of factors are considered, including remorse, rehabilitation, programming, input from the prosecutor and victims or survivors of victims, and reentry plans. It is important to provide compensation to the board members for their experience and expertise.

CON: The Attorney General's Office has many factors that should be considered with the standard of extraordinary cases. That standard should be preserved. There is a fundamental difference between a prosecutor seeking to resentence and the Clemency and Pardons Board's role of advising the Governor. The interest of justice standard is lower than current extraordinary standard. There needs to be some flexibility with the characteristics of the members of the board, and there needs to be some inclusion of systems actors, such as prosecutors, defense attorneys, and judges. Many people believe that the interest of justice standard that was adopted on SB 6164 is an unconstitutional expansion of the Governor's clemency powers, and that standard should not be in this bill.

Persons Testifying (Human Services): PRO: Representative Roger Goodman, Prime Sponsor; Waldo Waldron-Ramsey, Political Director, Washington Community Action Network; Barbara Serrano, Former Senior Policy Advisor to Former Gov. Jay Inslee; Cindy Arends Elsberry, Washington Defender Association.

CON: James McMahan, WA Assoc Sheriffs & Police Chiefs; Russell Brown, WA Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying (Human Services): No one.

Staff Summary of Public Testimony on Bill as Amended by Committee (Ways & Means): *The committee recommended a different version of the bill than what was heard.*
PRO: The updated version of the fiscal note attached to this bill does not reflect the true cost of implementation. This bill does not increase costs, and current staffing levels are sufficient to implement.

CON: This bill lowers existing standards without justification, imposes unnecessary costs, and lacks a clear need. This bill would help release convicted felons, and it's troubling that appointments to the Clemency and Pardons Board, under this bill, appear to represent specific interest groups. The bill as unwarranted and poorly aligned with public interest.

Persons Testifying (Ways & Means): PRO: Waldo Waldron-Ramsey, Political Director, Washington Community Action Network; Barbara Serrano, Former Senior Policy Advisor on Public Safety - Governor Inslee.

CON: James McMahan, WA Assoc Sheriffs & Police Chiefs; Tom Sahlberg.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.