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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.

Read first time 01/21/20. Referred to Committee on Law & Justice.

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

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

6 NEW SECTION. **Sec. 1.** Since the 1980s, the legislature has  
7 passed numerous laws increasing terms of confinement for almost all  
8 offenders, including: The elimination of parole; increasing statutory  
9 sentence ranges; establishing mandatory minimums; and establishing  
10 persistent offender laws. Exceptionally long sentences have proved to  
11 be especially ineffective at reducing recidivism or improving public  
12 safety. Many persons sentenced to extremely long sentences were  
13 young, under the age of thirty, when they were convicted and  
14 sentenced.

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

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

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

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

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

23 (a) An offender may earn early release time as authorized by RCW  
24 9.94A.729;

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

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

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

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

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

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

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

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

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

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

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

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

31 (g) The governor may pardon any offender;

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

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

38 (j) Notwithstanding any other provisions of this section, an  
39 offender sentenced for a felony crime listed in RCW 9.94A.540 as  
40 subject to a mandatory minimum sentence of total confinement shall

1 not be released from total confinement before the completion of the  
2 listed mandatory minimum sentence for that felony crime of conviction  
3 unless allowed under RCW 9.94A.540; (~~and~~)

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

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

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

12 **Sec. 3.** RCW 9.94A.880 and 2011 c 336 s 335 are each amended to  
13 read as follows:

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

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

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

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

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

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

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

30 (f) Law enforcement professional;

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

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

34 (i) Behavioral health professional; and

35 (j) A retired superior court judge.

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

38 (4) Members of the board shall serve terms of (~~four~~) five years  
39 (~~and~~), but may serve more than one term until their successors are

1 appointed and confirmed. (~~However, the~~) The governor shall stagger  
2 the initial terms (~~(by appointing one of the initial members for a~~  
3 ~~term of one year, one for a term of two years, one for a term of~~  
4 ~~three years, and two for terms of four years)~~) so that no more than  
5 three members are up for appointment in any given year.

6 (~~(3)~~) (5) The board shall elect a chair from among its members  
7 and shall adopt bylaws governing the operation of the board.

8 (~~(4)~~) (6) Members of the board shall (~~receive no compensation~~  
9 ~~but shall be reimbursed for travel expenses as provided in RCW~~  
10 ~~43.03.050 and 43.03.060 as now existing or hereafter amended)~~) each  
11 severally receive salaries fixed by the governor in accordance with  
12 the provisions of RCW 43.03.040, and in addition shall receive travel  
13 expenses incurred in the discharge of their official duties in  
14 accordance with RCW 43.03.050 and 43.03.060.

15 (~~(5)~~) (7) The board shall be funded adequate personnel to  
16 implement and maintain functional operations such as support,  
17 records, victim liaisons, and information technology.

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

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

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

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

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

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

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

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

36       NEW SECTION.   **Sec. 5.** A new section is added to chapter 9.94A  
37 RCW to read as follows:

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

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

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

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

8 (d) Does not have any current appeals pending.

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

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

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

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

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

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

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

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

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

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

8 (a) Public safety;

9 (b) The offender's criminal history;

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

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

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

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

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

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

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

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

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

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

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

35 (n) Any other relevant factors.

36 Further, the board shall consider a release plan presented by the  
37 offender showing where the offender will reside and how he or she  
38 will support himself or herself during the first year after his or  
39 her release. The department shall independently review the proposed  
40 release plan and make an independent evaluation to ensure the



1 defendant is not released to an area where the victim resides or that  
2 impacts community safety.

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

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

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

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

19 (12) An offender released by the board is subject to the  
20 supervision of the department up to the length of the court-imposed  
21 term of incarceration. The department shall monitor the offender's  
22 compliance with conditions of community custody imposed by the court  
23 or board and promptly report any violations to the board. Any  
24 violation of conditions of community custody established or modified  
25 by the board is subject to the provisions of RCW 9.95.425, 9.95.430,  
26 9.95.435, and 9.95.440.

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

30 (14) An offender released under the provisions of this section  
31 may be returned to the institution at the discretion of the board if  
32 the offender is found to have violated a condition of community  
33 custody. The offender is entitled to a hearing pursuant to RCW  
34 9.95.435. If the board finds that the offender has committed a new  
35 violation that is a felony, the board shall return the offender to  
36 the institution for up to the remainder of the court-imposed term of  
37 incarceration. An offender who has been returned to custody for  
38 having committed a new law violation that is a felony may not file a  
39 new petition for release.

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

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

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

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

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