

To: Sentencing Guidelines Commission
From: "Second Look" Working Group
Date: November 9, 2015
Re: A Proposal to create a process for taking a "second look" at inmates who have served very long sentences of imprisonment

The Issue:

When the Legislature adopted the Sentencing Reform Act in 1981, it recognized that with the adoption of determinate sentencing and the concomitant abolition of the possibility of release on parole there would be cases in which very long sentences would be served. All sentences imposed were to be served without any reduction in length except for the possibility of "earned early release time" which the Legislature authorized the Department of Corrections to award in amounts up to 1/3 of the sentence.¹ The only other possibility of release for these cases was the Governor's constitutional "pardoning power", WA. Const. Art III ¶ 9. Anticipating that there would be cases where inmates had served sentences longer than was necessary to satisfy the purposes of punishment articulated in the Sentencing Reform Act the Legislature created the Clemency and Pardon Board to advise the Governor on such cases. When the people adopted the "3 Strikes" Initiative in 1993, they anticipated that it would increase the number of inmates that would potentially be subject to the exercise of the "pardoning power" of the Governor. The initiative provided:

"Nothing in this Act shall ever 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. However, the people recommend that any offender subject to total confinement for life without the possibility of parole not be considered for release until the offender has reached the age of at least sixty years old and has been judged to be no longer a threat to society. The people further recommend that sex offenders be held to the utmost scrutiny under this subsection regardless of age." Laws of 1994, ¶4.

¹ Over the year, the Legislature has revised the amount of earned early release time which may be awarded from 10% to 50% of the imposed sentence. RCW 9.94A.729.

The number of inmates of advancing age who have served long sentences has significantly increased in recent years. Currently there are 44 inmates of age 60 or older who have served 20 years or more. There are also 66 inmates between 50 and 59 years of age who have served 20 years or longer. There are also 27 inmates between the ages of 40 to 49 who have served sentences of 20 years or longer.²

As inmates grow older the risk that they will reoffend if released goes down significantly. Old offenders whose crimes occurred decades ago no longer present a threat to society. As their age advances, the cost of their incarceration increases significantly, driven primarily by the cost of medical care which increases with advancing age. Continuing to imprison these inmates thus provides very little benefit to society at a steadily increasing cost.

Recommendations:

It is the unanimous view of the members of the work group that Washington should adopt a process for taking a “second look” at inmates who have served very long sentences of imprisonment and who no longer present a threat to society.

Procedure:

We propose a system in which eligible inmates would be individually evaluated by a “Second Look Review Board” composed of two members of the Indeterminate Sentence Review Board and one sitting or retired Superior Court Judge designated by the presiding judge of the county where the conviction occurred.

We propose that the Review Board shall presume that the original sentence was appropriate. Release may be approved if the Review Board determines by cogent and convincing circumstances that conditional release of the offender at this time is consistent with the purposes of sentencing and that the offender no longer is a risk to the public if released on conditions. In making this determination the Review Board shall consider:

- (1) The risk that the offender may re-offend or otherwise create a risk to the public;
- (2) The nature and circumstances of the offenses committed;

² These numbers exclude inmates convicted of aggravated murder in the first degree serving sentences of life without the possibility of release and inmates who are eligible for discretionary release by the Indeterminate Sentence Review board under determinate plus sex offender sentences, life sentences imposed on them as juveniles or are serving sentences for crimes committed before July 1, 1984.

- (3) The offender's social and medical history;
- (4) The offenders adjustment while incarcerated, including any infraction history, educational and work history while incarcerated;
- (5) The views of the victim or a representation of the victim of the crime;
- (6) The views of the prosecuting attorney and the law enforcement agency of the jurisdiction where the crimes were committed;
- (7) The views of members of the community who support the offender and will provide support for the offender and will provide support for the offender if released;
- (8) A risk assessment and psychological evaluation provided by the Department of Corrections including an assessment by Department of Corrections personnel of the offenders prospects;
- (9) The sentencing judge's analysis in imposing an exceptional sentence, if any;
- (10)The available resources in the community to assist in the transition of the offender to life in the community; and
- (11)Any other relevant factors

Any offender released by the Second Look Review Board shall be subject to conditions the Board determines advisable to promote a successful transition from incarceration to the community. Any violation of any condition imposed by the Board shall be subject to revocation procedures of the Indeterminate Sentence Review Board.

We propose that an evaluation of the effectiveness of the operations of the Second Look Review Board and of all offenders released be conducted by the Washington Institute for Public Policy.

Eligibility:

We have not reached total agreement as to which inmates should be eligible for consideration. We all agree that the "Second Look" review begin with inmates who have served sentences of 20 years or more imposed under the "3 Strikes" Initiative. There are currently 35 inmates in this category and there will be 30 more by 2018. These sentences were

imposed decades ago when different charging and disposition policies were employed by prosecuting attorneys. We believe that conditional release of some of these offenders would be in the public interest.

There are also an additional number of elderly inmates who have served 20 or more years of imprisonment and who are not eligible for review by the Indeterminate Sentence Review Board.³ Excluding those convicted of aggravated murder in the first degree and who are serving life sentences without the possibility of release as an alternative to the death penalty there are currently 60 inmates who have served 20 years or longer and are 60 years of age or older. This group is steadily increasing. By 2018, there will be an additional 25 inmates who are over 60 and have served 20 years or longer. For the most part, advancing age has significantly reduced the risk these offenders pose to the public safety. They remain imprisoned not because they continue to be dangerous, but because they are being punished for the very serious crimes they committed in the past. We believe the Commission should deliberate on whether it is appropriate to provide a “Second Look” review of these offenders to determine whether their continued incarceration is necessary to satisfy the first three purposes of sentencing established by the Sentencing Reform Act:

- (1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender’s criminal history;
- (2) Promote respect for the law by providing punishment which is just;
- (3) Be commensurate with the punishment imposed on others committing similar offenses;

Determining whether continued incarceration is still necessary to satisfy these purposes requires a searching individual evaluation which “Second Look” procedure could provide.

³ Inmates whose crimes were committed before July 1, 1984 and those sentenced to “determinate plus” sentences for sex offenses are subject to the jurisdiction of the Indeterminate Sentence Review Board.

	Petitions for Clemency or Pardons	Clemency and Pardons Board Recommendations to Governor	Governor Decisions Approve	Governor Decisions Deny
2005	49	48	9	32
2006	17	14	4	10
2007	23	16	5	11
2008	23	18	10	8
2009	28	26	7	12
2010	40	23	15	7
2011	32	23	9	12
2012	30	25	9	12
2013	38	29	12	9
2014	30	20	12	1

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