SB 5036 Is Insufficient to Address Problems With Clemency, Commutations, and Pardons

The Washington Association of Criminal Defense Lawyers (WACDL) and the Washington Defender Association (WDA) are opposed to Senate Bill 5036.

The clemency process, while it has worked for a few, is an ineffective tool to address release petitions for a significant number of inmates who have been serving extremely long sentences. For the following reasons, this will remain true under the minor changes to clemency law that are proposed under SB 5036:

1. The Clemency and Pardons, Board considers clemency, commutation, and pardon requests and then makes recommendations to the Governor on whether to grant or deny the requests. Thus, the final decisions on clemency, commutations, and pardons rest with the Governor.

   The Clemency Board currently consists of 5 unpaid, part-time members. Members hold hearings once per quarter for one or two days. The proposed bill would increase the Board to 10 members. However, like the current members, the enlarged Board would continue to consist of part-time members. While this bill proposes to provide a salary, it does not mandate an increase in hearing dates. Therefore, it will continue to lack the time and resources to consider the increased number of clemency requests that can and should be heard due to recent changes in other sentencing laws. Additionally, inmates filing these petitions would remain without the right to attorneys to assist them. Therefore, inmates would continue to have inadequate legal assistance to properly prepare their clemency requests because they will have to rely on volunteer attorneys or represent themselves.

2. Allowing clemency decisions to remain with the Governor continues to subject them to the politics of the moment. More may be granted by some governors. None may be granted by other governors notwithstanding that many are still deserving. Keeping the clemency decisions in the governor's office subjects them to political decisions that are not relevant to clemency determinations. This will continue to breed cynicism about the fairness and arbitrariness of the entire process. Consequently, clemency determinations should be moved to a more professional and capable body such as the Indeterminate Sentence Review Board. Such a body would be less subject to political fads and would have the ability, through full-time paid Board members, to timely consider the number of clemency requests that recent changes in the law make possible and all but require.

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3. The ineffective changes to the clemency process that would occur under SB 5036 will probably be used as an excuse by many to oppose changes in other areas of sentencing laws that are necessary to make a dent in mass incarceration. These other areas include sentence lengths, three strikes law, life sentences, enhancements, consecutive sentences, and other areas that would significantly reduce Washington's unprecedented and unnecessary incarcerations rates. Opposition to changes in sentencing laws have already voiced the opinion that nothing else needs to be done to reduce incarceration rates because those with unduly long sentences who "deserve" to be released can seek release with a clemency petition. However, this fails to acknowledge that thousands of persons are serving unjustly long sentences and, for that reason alone, deserve to be released. Those long sentences were motivated by the moral and racial panic in the 1980's and 1990's that led to the misguided tough on crime crusade. Therefore, many of these inmates should not be required to prove that they deserve to be released under the extremely slow, ineffective, and underfunded clemency process. We should simply recognize the immorality and racial disproportionality of their sentences, shorten them, and release them.

   Ineffective modifications to clemency law will only postpone the recognition of, and reckoning with, the true broken nature of our entire racially discriminatory sentencing system in Washington. Therefore, SB 5036 should be rejected.

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