

MEMORANDUM

TO: Sentencing Guidelines Commission

FROM: Maia McCoy, MSW

DATE: November 7, 2018

SUBJECT: Post-conviction Review

The proposed legislation would institute a new process, functioning both separately from, and in addition to, the current clemency process. While the proposal strives to make the clemency process more robust and identify those individuals who have meaningfully rehabilitated, we are potentially impeding recovery for crime victims, who have been provided few resources to also achieve meaningful rehabilitation. It is not the aim of this memorandum to pit these two overlapping groups of defendants and victims against one another, but it is necessary to approach the review of stringent sentences meted as a result of severe violent crime from a balanced perspective.

The drafted legislation would potentially allow every offender, even those with a life without parole (LWOP) sentence and/or those who have shown little initiative to better themselves, to petition for clemency at 15 years. I understand that we do not want to erect barriers for those who have proactively sought mentorship and betterment, but would there be any other criteria for eligibility for this process? As written, the legislation makes great strides in encouraging both offenders and DOC to prioritize programming five years prior to a review to support such efforts. However, if it is unlikely that an offender, even after completion of such programming, is going to be seriously considered, why would we compromise a survivor's well-being by undertaking a full review? *We could propose a preliminary screening process, so that only vetted, viable candidates for release continue in the review process and so that we allocate human and economic resources prudently and reduce re-traumatization.*

Given the recent Washington Supreme Court decision in *State of Washington vs. Eugene Allen Gregory*, abolishing use of capital punishment, we need to preserve the integrity of the LWOP sentence. If one is still able to petition for release, then what is the purpose of such a sentence? Suggesting the release of those with LWOP sentences does not seem politically viable on the coattails of *Gregory* and quite frankly seems callous to the victims of such crimes and/or their bereft loved ones.

The serious disqualifying infractions which may bar one from this process are unclear. It doesn't need to be spelled out in law, but for the sake of transparency, this information should be made available to those outside of DOC to provide legislators more information in adopting our recommendations and to provide some certainty to crime victims at the mercy of this process. [Moreover, swift and certain (SAC) sanctions are supposed to be predictable, however crime victims are left in the dark about what constitutes an infraction and how SAC is applied.]

Theoretically, it makes sense to not waste resources on keeping someone incarcerated who has meaningfully rehabilitated and no longer poses a threat to society. However, a lengthy sentence is not merely punitive as has been suggested, but also serves to hold an offender accountable, and most importantly, affords the crime victim an opportunity to recover and rebuild. Victims are offered minimal resources to recover from significant trauma. Twelve grief counseling sessions is inadequate to address traumatic grief. For such victims, a sentence serves to help stabilize that individual without the real threat of the offender at large. When we overturn a sentencing court's judgement and thrust a victim back into the depth of their trauma, it would be both equitable and beneficial to propose structural support for victims to also achieve meaningful recovery, such as the implementation of a Trauma Recovery Center model and bolstered Crime Victim's Compensation to address mental health.

What we should avoid is implementing a process which forces already vulnerable persons to relocate to remain safe because of perceived and/or real threat. Unfortunately, long periods of incarceration obfuscate risk assessment. An instrument cannot accurately predict recidivism if an actor hasn't been given opportunity to reoffend and how they will function when presented with uncertain environmental stressors is unknown. A three person panel is bound to make mistakes just as courts have wrongfully convicted persons. We should continue to discuss the composition of the ISRB and increasing the number of representatives responsible for the review. It would also benefit us to have more information from DOC about how they will determine the duration of supervision and to adumbrate what comprehensive re-entry services would look like. Might a crime victim have input on conditions of release?

Crime victims have few rights and protections through the criminal justice process and suffer severe emotional, physical, psychological, financial, and spiritual impacts as a result of victimization. They are rendered powerless, yet again, in a justice system that is inherently flawed and not victim-centered, and an extreme reduction in sentence would be yet another failure of that system to hold the convicted offender accountable. Part of true rehabilitation is taking ownership for one's actions and also accepting one's determinate sentence -- structured to be proportionate to the seriousness of the offense. Ideally a rehabilitated individual would also understand that the victim's sentence is a lifetime of pain, disability, and loss. The work group has already eschewed a standard of "exceptional rehabilitation," and yet we haven't defined a standard for "rehabilitation" for this process. What percentage may meet this vague threshold?

As a body, by mandate, we are working to increase judicial discretion, which may also invite greater disproportionality among jurisdictions. A post-conviction review process could offer a necessary check on sentencing to provide for proportionality review, looking to aggregate data to assess if an offender's sentence is racially just and/or commensurate with sentences from other jurisdictions. It also incentivizes personal improvement with the overall goal of successful reintegration in the community. Perhaps reintegration should be considered more holistically to be inclusive of crime victims and to propose a more politically viable solution for post-conviction review.