In 2015, the Sentencing Guidelines Commission (SGC) created a work group to discuss the idea of a second look option for individuals sentenced to Life Without Parole. Since then, several different entities have submitted proposals for a way to review individuals with long sentences to the legislature. The SGC has reviewed the literature and has created a review process around what the literature has found to work. This brief includes a draft proposal of the SGC’s post-conviction review process as well as support for why the SGC choose the components it did.

**Post-Conviction Review**

**Who Is Eligible?**

There are several groups who already have an avenue for review built into their sentence. Those are individuals sentenced prior the Sentencing Reform Act, individuals who received a sentence of 20 or more years when they were a juvenile and individuals sentenced with a Determinate-Plus sentence. All these sentences are under the jurisdiction of the Indeterminate Sentence Review Board (ISRB) and are not eligible under this post-conviction review process.

**Time Served**

The SGC recommends creating a post-conviction review process for offenders who have served at least 15 years in confinement. The American Law Institute (ALI) uses a 15 year eligibility term in their recommended policy and numerous scholars agree with them.\(^1\) The ALI’s reasoning behind 15 years is the same reasoning behind a second look option, “that sentences of extraordinary length present compelling ethical and utilitarian uncertainties – directly as a consequence of the amount of time they span.” There was near consensus within the ALI on the 15 year term, at least until there is information and data to suggest otherwise. The ALI goes on to suggest that 15 years be an aggregate period of

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incarceration, regardless of whether an individual has a single 30 year sentence, two consecutive 15 year sentences or two concurrent 30 year sentences.

**Offenses**
The post-conviction review is meant to be a release for incarcerated individuals who have rehabilitated and are no longer considered a threat to public safety. Because rehabilitation can occur regardless of the type of offense committed, it is the position of the SGC that all offense types be included. If an inmate has not demonstrated successful rehabilitation and has been considered to still pose a threat to society, the incarcerated individual will not be released. It would be a disservice to restrict access to this opportunity solely based on the offense committed.

The SGC considered excluding incarcerated individuals convicted of sex offenses as there were some committed prior to the Determinate-Plus law that received long confinement terms and would become part of this eligible population. They decided against this restriction because individuals who were sentenced under the Determinate-Plus law for the same offenses are given an opportunity for a release review through the ISRB under the Community Custody Board.6

**Who Has Jurisdiction?**
The SGC recommends the post-conviction review process be placed under the jurisdiction of the ISRB. The Clemency and Pardons Board (CPB) and a Community Board created in a legislative proposal7 were also considered. The ISRB was chosen as it met the requirements needed for a parole board to “operate effectively, appropriately, and knowledgeably” as determined by the National Institute for Corrections.8 Those requirements include:

- **Members who**
  - understand broad public policy expectations and legislative findings
  - remain apprised of changes in the law
  - are able to review and understand evidence-based practices and literature
  - are cognizant of the legal framework and principals involved
  - have learned effective interviewing skills
- **Independence in decision-making**
- **Collaboration with other agencies, such as the Department of Corrections**
- **Use of risk assessment**

The ISRB is an existing agency that already handles petitions for release from several groups of incarcerated individuals. It has established the necessary policies and practices and adding this post-conviction review to their responsibilities would not require as many resources as creating a new entity. For this post-conviction review process, the SGC recommends adding a judicial member as part of the ISRB’s hearing panel. The creation of a pool of six to eight retired former Superior Court or Appellate Court judges/justices would allow a judicial member to be available to participate in release hearings around the state. This added position is important to bring historical legal knowledge to the process. {Expound on this justification??}

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6 RCW 9.94A.507  
7 House Bill 1789 (2017-2018)  
One suggestion from the literature was to place requirements for becoming a board member in state statute.9,10 Washington does not have their requirements in statute, rather, they are available as a list of desirable qualifications included in every position announcement. The SGC recommends incorporating into statute minimum member requirements of a Bachelor’s degree and five years’ experience in a social science or criminal justice field, or 10 years’ experience in a social science or criminal justice field.

The proposed Community Board in HB 1789 listed specific qualifications for members of the board, such as an organization representing communities of color or racial equity, an advocacy group with experience with formerly incarcerated and a faith-based organization with interest in successful community reentry as a way to create a more diverse membership. Increasing diversity is a concern of others as well.11,12 The SGC supports a more diverse parole board and hopes a balance can be found between increased diversity while maintaining the competency that is essential for ISRB members.

The Community Board and the CPB were not chosen for several reasons.

- **Neither require specific education and experience for their members.** The qualifications set by the Community Board are related to the agency/organization the person would represent and the only qualification for CPB members noted in their bylaws13 is to be a legally registered voter in the State of Washington.

- **Neither have independent decision-making authority.** The proposed Community Board and the CPB are located within the Office of the Governor and their authority is limited to making recommendations to the governor who makes the final decision. The connection to a political office (governor) is a concern of some SGC members and others.14,15,16,17 Many other factors can influence a governor’s decision beyond the individual and his/her case.

- **Neither have full-time employed members.** The CPB members are volunteers and are often have other jobs. The Community Board proposal would be comprised of persons from other organizations or employees of state and local government. The members would be paid salary but some would also have other employment. Members of the ISRB are full-time employees.

- **Both hold petition hearings on a quarterly basis.** The CPB receives 60-100 petitions per year and holds a hearing for about 25 percent of those. As reported in 2014 by the chair of CPB, that

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12 Memorandum from Kimberly Gordon to Sentencing Guidelines Commission, June 1, 2018.


17 Memorandum from Kimberly Gordon to Sentencing Guidelines Commission, June 1, 2018.
was a manageable amount but she feared that “at some point it’s going to become overwhelming.”\textsuperscript{18} That time may be on the horizon as efforts by the Northwest Immigrant Rights Project and the Clemency Project have increased the CPB’s work load resulting in an additional one to two more days to their quarterly hearings.\textsuperscript{19} In comparison, the ISRB holds 30 – 35 release hearings and 12 violation hearings per month.\textsuperscript{20}

Other concerns with the clemency process include a lack of definition for “extraordinary circumstances”, attorneys are not available to most incarcerated individuals who want to complete a clemency petition, incarcerated individuals with lengthy sentences are often not eligible for programs and education that would help them to demonstrate they are rehabilitated and, while an individual’s disciplinary record is shared during a clemency hearing, a Department of Corrections’ (DOC) policy restricts DOC employees and/or contractors from providing comments at the hearing.\textsuperscript{21,22}

### When to Petition?

The SGC recommends using the same petition time line that is used with the ISRB’s Long Term Juvenile Board cases\textsuperscript{23} but based on a 15 year confinement term served. This process has already been approved by the legislature plus it would reduce the complexity of introducing another time line for the ISRB and DOC to follow.

### Why Have a Post-Conviction Review Process?

There are many reasons to have a post-conviction review process. Post-conviction reviews can be used as an incentive to encourage incarcerated individuals to pursue programming and invest in their own growth.\textsuperscript{24,25,26,27} A study that looked at inmate behavior before and after a state denied parole eligibility found that “inmates who lost parole eligibility as a consequence of the reform accumulated more disciplinary infractions, completed fewer prison rehabilitative programs and recidivated at higher rates after the reform than did a control group not subject to [the reform].”\textsuperscript{28}

Research has shown that individuals who were released after serving their full sentence (mandatory release) had higher re-arrest and reconviction rates than those who received parole (discretionary release).\textsuperscript{22,27}

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\textsuperscript{19} Phone conversation May 23, 2018 with Jennifer Rhéaume at the CPB.


\textsuperscript{21} Memorandum from Kimberly Gordon to Sentencing Guidelines Commission, June 1, 2018.

\textsuperscript{22} Washington DOC Policy 850.030

\textsuperscript{23} RCW 9.94A.730


\textsuperscript{28} Ibid.
release).  One of the studies investigated if there is a “parole effect” on reconviction rates and found “it is clear that those prisoners subject to post-release supervision have lower reconviction rates and, by inference, re-offending rates than those released at the end of their full sentence.”

Prison sentence lengths have been increasing in Washington and across the country and have been found to be a key driver in the increase in prison populations and costs. In Fiscal Year 2009, the average prison sentence issued was 39.4 months and by 2017 it was 41 months. Incarcerated individuals with these sentence lengths wouldn’t be eligible for the post-conviction review, but they do contribute to the increasing costs and occupancy of our prisons. Locating individuals who have rehabilitated and pose no threat to the community would help reduce the state’s correctional burden.

A post-conviction review process would create a huge incentive for incarcerated individuals to make positive changes in their behaviors and attitudes, invest in their future and themselves (i.e. “corrections”), and reduce prison populations and costs while still providing meaningful and real punishment for criminal behavior and keeping public safety a priority.

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31 Ibid.


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