

NEW SECTION. Sec. 14. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 11, 1986.

Passed the Senate March 4, 1986.

Approved by the Governor April 2, 1986, with the exception of certain items which are vetoed.

Filed in Office of Secretary of State April 2, 1986.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 5 and 13, Engrossed House Bill No. 1630, entitled:

"AN ACT Relating to health care service contractors."

Sections 5 and 13 of this bill conflict with amendments to RCW 48.44.145 contained in Engrossed Senate Bill No. 3636. The amendments in Engrossed Senate Bill No. 3636 are part of a new method of funding the Office of the Insurance Commissioner and are thus the appropriate amendments to RCW 48.44.145.

With the exception of sections 5 and 13, Engrossed House Bill 1630 is approved."

CHAPTER 224

[Substitute House Bill No. 1400] INDETERMINATE SENTENCING

AN ACT Relating to indeterminate sentencing; amending RCW 9.95.001, 9.95.003, 9.95.005, 9.95.007, 9.95.009, 9.95.015, 9.95.040, and 9.95.052; adding new sections to chapter 9.95 RCW; creating a new section; repealing RCW 9.95.001, 9.95.003, 9.95.005, 9.95.007, 9.95.009, 9.95.—, 9.95.015, and 9.95.—; repealing section 39, chapter 137, Laws of 1981 (uncodified); repealing section 1 of this 1986 act (uncodified); and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that a process for review of duration of confinement and release decisions for persons convicted of crimes committed before July 1, 1984, must be available after the board of prison terms and paroles ceases to exist. A transitional agency, the indeterminate sentence review board, is created to review such decisions until 1992 when all of the functions, powers, and duties previously performed by the indeterminate sentence review board will be transferred to the superior courts of the state of Washington.

Sec. 2. Section 1, chapter 114, Laws of 1935 and section 1, chapter 47, Laws of 1947 and RCW 9.95.001 are each amended to read as follows:

((There shall be a board of prison terms and paroles:)) On July 1, 1986, the board of prison terms and paroles shall be redesignated the indeterminate sentence review board. The newly designated board shall retain the same membership and staff as the previously designated board of prison terms and paroles. References to "the board" or "board of prison terms and

paroles" contained in this chapter, chapters 7.68, 9.95, 9.96, 71.06, and 72.04A RCW, and RCW 9A.44.045 and 72.68.031 are deemed to refer to the indeterminate sentence review board.

*Sec. 3. Section 9, chapter 340, Laws of 1955 as last amended by section 8, chapter 34, Laws of 1975-'76 2nd ex. sess. and RCW 9.95.003 are each amended to read as follows:

The board (~~(of prison terms and paroles)~~) shall consist of a chairman and six other members, each of whom shall be appointed by the governor with the consent of the senate. Each member shall hold office for a term of five years, and until his or her successor is appointed and qualified(~~(-PROVIDED, That the two additional members to be appointed to the board shall serve initial terms ending April 15, 1972 and 1974 respectively)~~). The terms shall expire on April 15th of the expiration year. Vacancies in the membership of the board shall be filled (~~(in the same manner in which the original appointments are made)~~) by appointment by the governor with the consent of the senate. ***However, the governor may request nominations of qualified persons when filling vacancies in the board after July 1, 1987.*** In the event of the inability of any member to act, the governor shall appoint some competent person to act in his stead during the continuance of such inability. The members shall not be removable during their respective terms except for cause determined by the superior court of Thurston county. The governor in appointing the members shall designate one of them to serve as chairman at the governor's pleasure.

The members of the board (~~(of prison terms and paroles)~~) and its officers and employees shall not engage in any other business or profession or hold any other public office; nor shall they, at the time of appointment or employment or during their incumbency, serve as the representative of any political party on an executive committee or other governing body thereof, or as an executive officer or employee of any political committee or association. The members of the board (~~(of prison terms and paroles)~~) shall each severally receive salaries(~~(, payable in monthly installments, as may be)~~) fixed by the governor in accordance with the provisions of RCW 43.03.040, and in addition (~~(thereto;)~~) shall receive travel expenses incurred in the discharge of their official duties in accordance with RCW 43.03.050 and 43.03.060 (~~(as now existing or hereafter amended)~~).

The board may employ, and fix, with the approval of the governor, the compensation of and prescribe the duties of a secretary and such officers, employees, and assistants as may be necessary, and provide necessary quarters, supplies, and equipment.

*Sec. 3 was partially vetoed, see message at end of chapter.

Sec. 4. Section 10, chapter 340, Laws of 1955 as amended by section 2, chapter 32, Laws of 1959 and RCW 9.95.005 are each amended to read as follows:

The board (~~((of prison terms and paroles))~~) shall meet at the penitentiary and the reformatory at such times as may be necessary for a full and complete study of the cases of all convicted persons whose (~~((terms of imprisonment))~~) durations of confinement are to be determined by it or whose applications for parole come before it. Other times and places of meetings may also be fixed by the board.

The superintendents of the different institutions shall provide suitable quarters for the board and assistants while in the discharge of their duties.

Sec. 5. Section 3, chapter 32, Laws of 1959 as amended by section 1, chapter 63, Laws of 1975-'76 2nd ex. sess. and RCW 9.95.007 are each amended to read as follows:

The board (~~((of prison terms and paroles))~~) may meet and transact business in panels. Each board panel shall consist of at least two members of the board. In all matters concerning the internal affairs of the board and policy-making decisions, a majority of the full board must concur in such matters. The chairman of the board with the consent of a majority of the board may designate any two members to exercise all the powers and duties of the board in connection with any hearing before the board. If the two members so designated cannot unanimously agree as to the disposition of the hearing assigned to them, such hearing shall (~~((not))~~) be reheard by the full board. All actions of the full board shall be by concurrence of a majority of the board members.

Sec. 6. Section 24, chapter 137, Laws of 1981 as last amended by section 1, chapter 279, Laws of 1985 and RCW 9.95.009 are each amended to read as follows:

(1) On July 1, (~~((1988))~~) 1986, the board of prison terms and paroles shall (~~((cease to exist. Prior to that time,))~~) be redesignated as the indeterminate sentencing review board. The board's membership shall be reduced as follows: ((a)) On July 1, 1986, ((the board shall be reduced to five members. This)) and on July 1st of each year until 1992, the number of board members shall be reduced in a manner commensurate with the board's remaining workload as determined by the office of financial management based upon its population forecast for the indeterminate sentencing system and in conjunction with the budget process. To meet the statutory obligations of the indeterminate sentence review board, the number of board members shall not be reduced to fewer than three members, although the office of financial management may designate some or all members as part-time members and specify the extent to which they shall be less than full-time members. Any reduction shall take place by the expiration, on that date, of the ((two)) term or terms having the least time left to serve. ((b)) On July 1, 1987, the board shall be reduced to three members. This reduction shall take place by the expiration, on that date, of the two terms having the least time left to serve.))

(2) ~~((Prior to its expiration and))~~ After July 1, 1984, the board shall continue its functions with respect to persons ~~((incarcerated for))~~ convicted of crimes committed prior to July 1, 1984, and committed to the department of corrections. When making decisions on duration of confinement, and parole release under RCW 9.95.100 and 9.95.110, the board shall consider the ((standard ranges and)) purposes, standards, and sentencing ranges adopted pursuant to RCW 9.94A.040 and the minimum term recommendations of the sentencing judge and prosecuting attorney, and shall attempt to make decisions reasonably consistent with those ranges ((and)), standards, purposes, and recommendations: PROVIDED, That the board and its successors shall give adequate written reasons whenever a minimum term or parole release decisions is made which is outside the sentencing ranges adopted pursuant to 9.94A.040 RCW. In making such decisions, the board and its successors shall consider the different charging and disposition practices under the indeterminate sentencing system.

~~((3) On July 1, 1988, all documents, records, files, equipment, and other tangible property of the board of prison terms and paroles shall be delivered to the custody of the department of corrections:))~~

NEW SECTION. Sec. 7. A new section is added to chapter 9.95 RCW to read as follows:

When the court commits a convicted person to the department of corrections on or after July 1, 1986, for an offense committed before July 1, 1984, the court shall, at the time of sentencing or revocation of probation, fix the minimum term. The term so fixed shall not exceed the maximum sentence provided by law for the offense of which the person is convicted.

The court shall attempt to set the minimum term reasonably consistent with the purposes, standards, and sentencing ranges adopted under RCW 9.94A.040, but the court is subject to the same limitations as those placed on the board under RCW 9.92.090, 9.95.040 (1) through (4), 9.95.115, 9A.32.040, 9A.44.045, and chapter 69.50 RCW. The court's minimum term decision is subject to review to the same extent as a minimum term decision by the parole board before July 1, 1986.

Thereafter, the expiration of the minimum term set by the court minus any time credits earned under RCW 9.95.070 and 9.95.110 constitutes the parole eligibility review date, at which time the board may consider the convicted person for parole under RCW 9.95.100 and 9.95.110 and chapter 72.04A RCW. Nothing in this section affects the board's authority to reduce or increase the minimum term, once set by the court, under RCW 9.95.040, 9.95.052, 9.95.055, 9.95.070, 9.95.080, 9.95.100, 9.95.115, or 9.95.125.

Sec. 8. Section 1, chapter 138, Laws of 1961 and RCW 9.95.015 are each amended to read as follows:

In every criminal case wherein conviction would require the board ~~((of prison terms and paroles))~~ to determine the duration of confinement, or the

court to make such determination for persons committed after July 1, 1986, for crimes committed before July 1, 1984, and wherein there has been an allegation and evidence establishing that the accused was armed with a deadly weapon at the time of the commission of the crime, the court shall make a finding of fact of whether or not the accused was armed with a deadly weapon, as defined by RCW 9.95.040, at the time of the commission of the crime, or if a jury trial is had, the jury shall, if it find the defendant guilty, also find a special verdict as to whether or not the defendant was armed with a deadly weapon, as defined in RCW 9.95.040, at the time of the commission of the crime.

Sec. 9. Section 5, chapter 133, Laws of 1955 as last amended by section 2, chapter 63, Laws of 1975-'76 2nd ex. sess. and RCW 9.95.040 are each amended to read as follows:

The board shall fix the duration of confinement for persons committed by the court before July 1, 1986, for crimes committed before July 1, 1984. Within six months after the admission of ((a)) the convicted person to the penitentiary, reformatory, or such other state penal institution as may hereafter be established, the board ((of prison terms and paroles)) shall fix the duration of his confinement. The term of imprisonment so fixed shall not exceed the maximum provided by law for the offense of which he was convicted or the maximum fixed by the court where the law does not provide for a maximum term.

The following limitations are placed on the board ((of prison terms and paroles)) or the court for persons committed to prison on or after July 1, 1986, for crimes committed before July 1, 1984, with regard to fixing the duration of confinement in certain cases, notwithstanding any provisions of law specifying a lesser sentence((-to-wit)):

(1) For a person not previously convicted of a felony but armed with a deadly weapon at the time of the commission of his offense, the duration of confinement shall not be fixed at less than five years.

(2) For a person previously convicted of a felony either in this state or elsewhere and who was armed with a deadly weapon at the time of the commission of his offense, the duration of confinement shall not be fixed at less than seven and one-half years.

The words "deadly weapon," as used in this section include, but are not limited to, any instrument known as a blackjack, sling shot, billy, sand club, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than three inches, any razor with an unguarded blade, ((and)) any metal pipe or bar used or intended to be used as a club, any explosive, and any weapon containing poisonous or injurious gas.

(3) For a person convicted of being an habitual criminal within the meaning of the statute which provides for mandatory life imprisonment for such habitual criminals, the duration of confinement shall not be fixed at

less than fifteen years. The board shall retain jurisdiction over such convicted person throughout his natural life unless the governor by appropriate executive action orders otherwise.

(4) Any person convicted of embezzling funds from any institution of public deposit of which he was an officer or stockholder, the duration of confinement shall be fixed at not less than five years.

Except when an inmate of the reformatory, penitentiary, or such other penal institution as may hereafter be established(;) has been convicted of murder in the first or second degree, the board may parole an inmate prior to the expiration of a mandatory minimum term, provided such inmate has demonstrated a meritorious effort in rehabilitation and at least two-thirds of the board members concur in such action: PROVIDED, That any inmate who has a mandatory minimum term and is paroled prior to the expiration of such term according to the provisions of this chapter shall not receive a conditional release from supervision while on parole until after the mandatory minimum term has expired.

Sec. 10. Section 1, chapter 67, Laws of 1972 ex. sess. as amended by section 1, chapter 196, Laws of 1983 and RCW 9.95.052 are each amended to read as follows:

At any time after the board (~~(of prison terms and paroles)~~) (or the court after July 1, 1986) has determined the minimum term of confinement of any person subject to confinement in a state correctional institution, the board may request the superintendent of such correctional institution to conduct a full review of such person's prospects for rehabilitation and report to the board the facts of such review and the resulting findings. Upon the basis of such report and such other information and investigation that the board deems appropriate, the board may redetermine and refix such convicted person's minimum term of confinement whether the term was set by the board or the court.

The board shall not reduce a person's minimum term of confinement unless the board has received from the department of corrections all institutional conduct reports relating to the person.

NEW SECTION. Sec. 11. A new section is added to chapter 9.95 RCW to read as follows:

The board shall cause to be prepared criteria for duration of confinement, release on parole, and length of parole for persons committed to prison for crimes committed before July 1, 1984.

The proposed criteria should take into consideration RCW 9.95.009(2). Before submission to the governor, the board shall solicit comments and review on their proposed criteria for parole release. These proposed criteria shall be submitted for consideration by the 1987 legislature.

NEW SECTION. Sec. 12. A new section is added to chapter 9.95 RCW to read as follows:

(1) The indeterminate sentencing review board shall cease to exist on June 30, 1992, and all of its powers, duties, and functions with respect to persons convicted of crimes committed before July 1, 1984, shall be transferred to the superior courts of the state of Washington. Prior to June 30, 1992, the board shall review each inmate and prepare a report for the superior courts. This report shall include a recommendation regarding the offender's suitability for parole and appropriate parole conditions. The sentencing judge or his or her successor in the county of conviction shall thereafter have full jurisdiction and authority over such offenders. These duties may be delegated to commissioners. Actions taken by commissioners shall be in the form of a report and recommendation to the sentencing judge or his or her successors who have sole authority to determine duration of confinement or parole release.

(2) The indeterminate sentence review board, Washington association of prosecuting attorneys, Washington defender association, department of corrections, administrator for the courts, and office of financial management shall prepare an implementation plan to accomplish transfer of the board's powers, duties, and functions to the superior courts of the state of Washington. The plan shall include a detailed fiscal analysis and recommended formulas and procedures for the reimbursement of costs to local governments. This plan shall be presented to the 1990 legislature.

(3) On July 1, 1992, all documents, records, files, equipment, and other tangible property of the indeterminate sentencing review board shall be transferred to the department of corrections. The department of corrections shall assist the judiciary in fulfilling its responsibilities under this chapter, including the preparation of written recommendations.

(4) On July 1, 1992, references to the "board" or "the indeterminate sentence review board" contained in this chapter, chapters 7.68, 9.95, 9.96, 71.06, and 72.04A RCW, and RCW 9A.44.045 and 72.68.031 are deemed to refer to the superior court of the state of Washington that originally sentenced the offender to prison.

NEW SECTION. Sec. 13. A new section is added to chapter 9.95 RCW to read as follows:

It is the intent of the legislature that costs incurred by the counties of the state of Washington as a result of the transfer of the functions, duties, and powers of the indeterminate sentencing review board on July 1, 1992, to the superior courts of the state of Washington shall be reimbursed to the counties by the state of Washington. The 1990 legislature shall consider the recommended formulas and procedures for reimbursement presented in the implementation plan prepared by the indeterminate sentencing review board, administrator for the courts, Washington association of prosecuting attorneys, Washington defender association, department of corrections, and office of financial management.

NEW SECTION. Sec. 14. The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 1992:

- (1) Section 1 of this 1986 act (uncodified);
- (2) Section 1, chapter 114, Laws of 1935, section 1, chapter 47, Laws of 1947, section 2 of this 1986 act and RCW 9.95.001;
- (3) Section 9, chapter 340, Laws of 1955, section 1, chapter 32, Laws of 1959, section 9, chapter 98, Laws of 1969, section 8, chapter 34, Laws of 1975-'76 2nd ex. sess., section 3 of this 1986 act and RCW 9.95.003;
- (4) Section 10, chapter 340, Laws of 1955, section 2, chapter 32, Laws of 1959, section 4 of this 1986 act and RCW 9.95.005;
- (5) Section 3, chapter 32, Laws of 1959, section 1, chapter 63, Laws of 1975-'76 2nd ex. sess., section 5 of this 1986 act and RCW 9.95.007;
- (6) Section 24, chapter 137, Laws of 1981, section 8, chapter 192, Laws of 1982, section 1, chapter 279, Laws of 1985, section 6 of this 1986 act and RCW 9.95.009;
- (7) Section 7 of this 1986 act and RCW 9.95.—;
- (8) Section 1, chapter 138, Laws of 1961, section 8 of this 1986 act and RCW 9.95.015; and
- (9) Section 11 of this 1986 act and RCW 9.95.—.

NEW SECTION. Sec. 15. Section 39, chapter 137, Laws of 1981 (uncodified) is repealed.

NEW SECTION. Sec. 16. Sections 1 through 13 of this act shall take effect July 1, 1986.

NEW SECTION. Sec. 17. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House March 8, 1986.

Passed the Senate March 3, 1986.

Approved by the Governor April 2, 1986, with the exception of certain items which are vetoed.

Filed in Office of Secretary of State April 2, 1986.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 3 in part of Substitute House Bill No. 1400, entitled:

"AN ACT Relating to indeterminate sentencing."

This bill makes a number of changes relative to the Board of Prison Terms and Paroles, including its redesignation as the Indeterminate Sentencing Review Board. I am supportive of the bill.

However, one sentence in section 3 appears to be an anomaly and reads as follows: "However, the Governor may request nominations of qualified persons when filling vacancies in the Board after July 1, 1987." I have vetoed this sentence out of section 3 of the bill because its meaning is not clear. At the present time I do request nominations of qualified people when filling vacancies on the Board and the direction to start doing this after July 1, 1987, does not make sense. Leaving this sentence in

the statute could only lead to confusing interpretations if someone were to question the meaning of this section.

With the exception of section 3 in part, Substitute House Bill No. 1400 is approved."

CHAPTER 225

[House Bill No. 1415]

JAPANESE INTERNMENT—REDRESS OF CIVIL RIGHTS RESTRICTIONS— MUNICIPALITIES

AN ACT Relating to redress of civil rights restrictions resulting from federal Executive Order 9066; adding new sections to chapter 41.04 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The dismissal or termination of various municipal employees during World War II resulted from the promulgation of federal Executive Order 9066 which was based mainly on fear and suspicion rather than on factual justification. It is fair and just that redress be made to those employees who were terminated from municipal employment during the wartime years because of these circumstances. The legislature therefore finds that equity and fairness will be served by authorizing municipalities to accept claims for salary and other employment related losses suffered by the municipal employees directly affected and to pay the claims subject to the provisions of this chapter.

NEW SECTION. Sec. 2. A municipality may by ordinance or resolution provide for redress to any municipal employee or the surviving spouse of a municipal employee who, due to the promulgation of federal Executive Order 9066, was dismissed, terminated from a temporary position, or rejected during the person's probationary period, or who voluntarily resigned in lieu of dismissal from municipal employment, and who incurred salary and other employment related losses as a result thereof during the years 1942 through 1947.

NEW SECTION. Sec. 3. Sections 2 through 5 of this act do not require a municipality to adopt an ordinance or resolution providing for redress of salary and other employment related losses.

NEW SECTION. Sec. 4. Under the system of redress authorized under sections 2 through 5 of this act:

(1) A municipality may determine in its sole discretion the monetary amount of redress for salary and other employment related losses, which may not exceed five thousand dollars for any undivided claim.

(2) If a municipality adopts an ordinance or resolution providing for redress of salary and other employment related losses, it has no obligation to notify directly any person of possible eligibility for redress of salary and other employment related losses.