

117TH CONGRESS
1ST SESSION

H. R. 6234

To improve the governmental process for recommending applications for clemency, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 9, 2021

Ms. PRESSLEY (for herself, Ms. BUSH, Mr. JEFFRIES, Mr. COHEN, Ms. SCHAKOWSKY, Ms. TLAIB, Mr. CARSON, Ms. NORTON, Ms. OCASIO-CORTEZ, Mrs. WATSON COLEMAN, Ms. BASS, Ms. OMAR, Mr. GARCÍA of Illinois, Mr. CARTER of Louisiana, Mr. JONES, Mr. CLEAVER, Mr. BOWMAN, Mr. JOHNSON of Georgia, and Mr. EVANS) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To improve the governmental process for recommending applications for clemency, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair and Independent
5 Experts in Clemency Act” or the “FIX Clemency Act”.

1 **SEC. 2. ESTABLISHMENT OF U.S. CLEMENCY BOARD.**

2 (a) IN GENERAL.—There is established an inde-
3 pendent board to be known as the “U.S. Clemency Board”
4 (in this Act referred to as the “Board”).

5 (b) DUTIES.—

6 (1) IN GENERAL.—The duties of the Board
7 shall be to—

8 (A) recommend individuals for clemency
9 directly to the President;

10 (B) make available applications for clem-
11 ency in English and Spanish;

12 (C) review applications for any person con-
13 victed of a Federal offense or experiencing Fed-
14 eral collateral consequences requesting a par-
15 don, commutation, remission of a fine or for-
16 feiture or restoration of civil and political
17 rights, not later than 18 months after submis-
18 sion of such application;

19 (D) maintain public statistics and records
20 of all acts of clemency granted by each Presi-
21 dent;

22 (E) compile research reports on relevant
23 subjects;

24 (F) transmit an annual report to Congress
25 outlining the Board’s activities, feedback from
26 applicants, and recommendations disaggregated

1 by relevant characteristics, including age, gen-
2 der identity, race and ethnicity, sexual orienta-
3 tion, disability, type of offense, years served,
4 and geographical location of the individual ap-
5 plying for clemency; and

6 (G) establish a process for applicants
7 whose applications are not recommended to the
8 President to petition for reconsideration by the
9 full Board after rejection by a panel.

10 (2) PRIORITY.—In carrying out the duties
11 under paragraph (1), the Board shall seek guidance
12 from the President on any priority factors for re-
13 viewing applications. Any selected priority factors
14 shall be included in the annual report under section
15 7.

16 (c) POWER TO COMPEL.—The Board may request
17 any Federal agency or Federal judicial officer to disclose
18 information, data, and reports related to any application
19 being considered for clemency. The Federal agency or
20 Federal judicial officer shall fully disclose all relevant in-
21 formation, data, and reports, including presentence re-
22 ports, subject to any restrictions in accordance with the
23 law.

24 (d) ADMISSION OF GUILT.—The Board shall not re-
25 quire any applicant to admit guilt as a condition of rec-

1 ommendation for pardon, commutation, remission of a
2 fine or forfeiture or restoration of civil and political rights.
3 Any admission of guilt in an application may not be used
4 against an applicant in any way nor is such admission ad-
5 missible in a court of law.

6 (e) DEFINITIONS.—In this section:

7 (1) CLEMENCY.—The term “clemency” includes
8 a full pardon, partial or full commutation of sen-
9 tence, or remission of a fine or forfeiture or restora-
10 tion of civil and political rights.

11 (2) FEDERAL OFFENSE.—The term “Federal
12 offense” includes any offense under Federal statute
13 or the Uniform Code of Military Justice.

14 **SEC. 3. MEMBERSHIP.**

15 (a) BOARD COMPOSITION.—The Board shall be com-
16 posed of 9 members possessing significant experience with
17 the criminal legal system, clemency, behavioral health, or
18 reentry services appointed by the President, including—

19 (1) an individual who was formerly incarcerated;
20

21 (2) an individual who has been directly im-
22 pacted by crime;

23 (3) an individual who has previously served or
24 currently serves in a Federal defender organization;
25 and

1 (4) an individual who shall serve as representa-
2 tive of the Department of Justice.

3 (b) INDEPENDENT MEMBERS.—To be a member ap-
4 pointed pursuant to subsection (a), except subsection
5 (a)(4), the member shall have or have had no affiliation
6 with the Department of Justice in the 16 years prior to
7 such appointment.

8 (c) TERMS.—

9 (1) IN GENERAL.—Members of the Board may
10 serve throughout the presidency of the President
11 who appointed them.

12 (2) VACANCY.—Any vacancy of the Board shall
13 not affect the powers and duties of the Board. The
14 President shall have the authority to fill a vacancy
15 on the Board.

16 (3) REAPPOINTMENT.—A member of the Board
17 shall be eligible for reappointment to the Board.

18 (d) CHAIRPERSON.—The Chairperson of the Board
19 shall be designated by the President after all members are
20 appointed to the Board.

21 (e) PANELS.—The Board may convene panels of 3
22 Board members to review applications and recommend in-
23 dividuals for clemency if 2 of the Board members on the
24 panel are in favor of such recommendation.

1 (f) MAJORITY.—The Board shall require a majority
2 of members present and voting to approve actions of the
3 Board.

4 (g) PROHIBITION OF COMPENSATION OF FEDERAL
5 EMPLOYEES.—Members of the Board who are full-time
6 officers and employees of the United States may not re-
7 ceive additional pay, allowances, or benefits by reason of
8 their service on the Board.

9 (h) COMPENSATION OF NON-FEDERAL EMPLOY-
10 EES.—Members of the Board who are not full-time offi-
11 cers and employees of the United States shall each be paid
12 at a rate equal to the rate of basic pay for level IV of
13 the Executive Schedule by the Executive Office of the
14 President.

15 (i) TRAVEL EXPENSES.—Each member of the Board
16 shall receive travel expenses, including per diem in lieu
17 of subsistence, in accordance with applicable provisions
18 under subchapter I of chapter 57 of title 5, United States
19 Code.

20 (j) MEETINGS.—The Board shall meet at the call of
21 the Chairperson not less than once a quarter each year
22 to conduct business.

1 **SEC. 4. ABOLITION OF OFFICE OF THE PARDON ATTORNEY;**
2 **TRANSFER OF FUNCTIONS AND PERSONNEL**
3 **OF THE OFFICE OF THE PARDON ATTORNEY**
4 **TO THE BOARD.**

5 (a) ABOLITION.—The Office of the Pardon Attorney
6 of the Department of Justice shall be abolished not later
7 than 120 days after the date of enactment of this Act.

8 (b) TRANSFER OF FUNCTIONS.—The functions of the
9 Office of the Pardon Attorney shall be transferred to and
10 carried out by the Board. The functions authorized to be
11 performed by the office described in subsection (a) as of
12 the day before the date of enactment of this Act, and the
13 assets and personnel associated with such functions, are
14 transferred to the Board.

15 (c) GRADE RETENTION.—In the case of an employee
16 transferred to the Board under subsection (b), whether a
17 full-time or part-time employee—

18 (1) subsections (b) and (c) of section 5362 of
19 title 5, United States Code, relating to grade reten-
20 tion, shall apply to the employee, except that—

21 (A) the grade retention period shall be the
22 one-year period beginning on the date of the
23 transfer; and

24 (B) paragraphs (1), (2), and (3) of such
25 subsection (c) shall not apply to the employee;
26 and

1 (2) the employee may not be separated, other
2 than pursuant to chapter 75 of title 5, United States
3 Code, during such one-year period.

4 (d) ADMINISTRATIVE HEAD.—The Board established
5 under section 2 shall appoint, in consultation with the At-
6 torney General, a Pardon Attorney to act as the adminis-
7 trative head of the Board. Such Pardon Attorney shall re-
8 port to the Board and be paid by the Executive Office
9 of the President.

10 (e) REFERENCES.—Any reference in any other Fed-
11 eral law, Executive order, rule, regulation, delegation of
12 authority, or any document—

13 (1) to the head of the Office of the Pardon At-
14 torney is deemed to be the Pardon Attorney ap-
15 pointed by the Board established under section 2, in
16 consultation with the Attorney General, to act as the
17 administrative head of the Board; or

18 (2) to the Office of the Pardon Attorney is
19 deemed to refer to the Board.

20 (f) EXERCISE OF AUTHORITIES.—Except as other-
21 wise provided by law, the Board may, for the purposes
22 of performing the functions of the Office of the Pardon
23 Attorney, exercise all authorities under any provision of
24 law that were available with respect to the performance

1 of the function immediately before the effective date of
2 the transfer of the function under this section.

3 (g) SAVINGS PROVISIONS.—

4 (1) LEGAL DOCUMENTS.—All orders, deter-
5 minations, rules, regulations, permits, grants, loans,
6 contracts, agreements, certificates, licenses, and
7 privileges—

8 (A) that have been issued, made, granted,
9 or allowed to become effective by the President
10 or any other Government official, or by a court
11 of competent jurisdiction, in the performance of
12 any function that is transferred by this Act;
13 and

14 (B) that are in effect on the effective date
15 of such transfer (or become effective after such
16 date pursuant to their terms as in effect on
17 such effective date),

18 shall continue in effect according to their terms until
19 modified, terminated, superseded, set aside, or re-
20 voked in accordance with law by the President, any
21 other authorized Government official, a court of
22 competent jurisdiction, or operation of law.

23 (2) PROCEEDINGS.—This Act shall not affect
24 any proceedings or any application for any benefits,
25 service, license, permit, certificate, or financial as-

1 sistance pending on the date of enactment of this
2 Act before an office abolished by this Act, but such
3 proceedings and applications shall be continued. Or-
4 ders shall be issued in such proceedings, appeals
5 shall be taken therefrom, and payments shall be
6 made pursuant to such orders, as if this Act had not
7 been enacted, and orders issued in any such pro-
8 ceeding shall continue in effect until modified, termi-
9 nated, superseded, or revoked by a duly authorized
10 official, by a court of competent jurisdiction, or by
11 operation of law. Nothing in this subsection shall be
12 considered to prohibit the discontinuance or modi-
13 fication of any such proceeding under the same
14 terms and conditions and to the same extent that
15 such proceeding could have been discontinued or
16 modified if this Act had not been enacted.

17 (3) SUITS.—This Act shall not affect suits com-
18 menced before the date of enactment of this Act,
19 and in all such suits, proceeding shall be had, ap-
20 peals taken, and judgments rendered in the same
21 manner and with the same effect as if this Act had
22 not been enacted.

23 (4) NONABATEMENT OF ACTIONS.—No suit, ac-
24 tion, or other proceeding commenced by or against
25 the Department of Justice, or by or against any in-

1 dividual in the official capacity of such individual as
2 an officer or employee of an office transferred by
3 this Act, shall abate by reason of the enactment of
4 this Act.

5 (5) CONSTANCE OF SUITS.—If any Government
6 officer in the official capacity of such officer is party
7 to a suit with respect to a function of the officer,
8 and under this Act such function is transferred to
9 any other officer or office, then such suit shall be
10 continued with the other officer or the head of such
11 other office, as applicable, substituted or added as a
12 party.

13 (6) ADMINISTRATIVE PROCEDURE AND JUDI-
14 CIAL REVIEW.—Except as otherwise provided by this
15 Act, any statutory requirements relating to notice,
16 hearings, action upon the record, or administrative
17 or judicial review that apply to any function trans-
18 ferred by this Act shall apply to the exercise of such
19 function by the head of the Federal agency, and
20 other officers of the agency, to which such function
21 is transferred by this Act.

22 (h) TRANSFER OF ASSETS.—Except as otherwise
23 provided in this Act, so much of the personnel, property,
24 records, and unexpended balances of appropriations, allo-
25 cations, and other funds employed, used, held, available,

1 or to be made available in connection with a function
2 transferred to an official or agency by this Act shall be
3 available to the official or the head of that agency, respec-
4 tively, at such time or times as the Director of the Office
5 of Management and Budget directs for use in connection
6 with the functions transferred.

7 (i) DELEGATION AND ASSIGNMENT.—Except as oth-
8 erwise expressly prohibited by law or otherwise provided
9 in this Act, an official to whom functions are transferred
10 under this Act (including the head of any office to which
11 functions are transferred under this Act) may delegate
12 any of the functions so transferred to such officers and
13 employees of the office of the official as the official may
14 designate, and may authorize successive redelegations of
15 such functions as may be necessary or appropriate. No
16 delegation of functions under this section or under any
17 other provision of this Act shall relieve the official to whom
18 a function is transferred under this Act of responsibility
19 for the administration of the function.

20 (j) AUTHORITY OF THE DIRECTOR OF THE OFFICE
21 OF MANAGEMENT AND BUDGET WITH RESPECT TO
22 FUNCTIONS TRANSFERRED.—

23 (1) DETERMINATIONS.—If necessary, the Di-
24 rector shall make any determination of the functions
25 that are transferred under this Act.

1 (2) INCIDENTAL TRANSFERS.—The Director, at
2 such time or times as the Director shall provide,
3 may make such determinations as may be necessary
4 with regard to the functions transferred by this Act,
5 and to make such additional incidental dispositions
6 of personnel, assets, liabilities, grants, contracts,
7 property, records, and unexpended balances of ap-
8 propriations, authorizations, allocations, and other
9 funds held, used, arising from, available to, or to be
10 made available in connection with such functions, as
11 may be necessary to carry out the provisions of this
12 Act. The Director shall provide for the termination
13 of the affairs of all entities terminated by this Act
14 and for such further measures and dispositions as
15 may be necessary to effectuate the purposes of this
16 Act.

17 (k) CERTAIN VESTING OF FUNCTIONS CONSIDERED
18 TRANSFERS.—For purposes of this Act, the vesting of a
19 function in a department or office pursuant to reestablish-
20 ment of an office shall be considered to be transfer of the
21 function.

22 (l) AVAILABILITY OF EXISTING FUNDS.—Existing
23 appropriations and funds available for the performance of
24 functions, programs, and activities terminated pursuant to
25 this Act shall remain available, for the duration of their

1 period of availability, for necessary expenses in connection
2 with the termination and resolution of such functions, pro-
3 grams, and activities.

4 (m) DEFINITIONS.—In this section:

5 (1) FUNCTION.—The term “function” includes
6 any duty, obligation, power, authority, responsibility,
7 right, privilege, activity, or program.

8 (2) OFFICE.—The term “office” includes any
9 office, administration, agency, bureau, institute,
10 council, unit, organizational entity, or component
11 thereof.

12 **SEC. 5. FEDERAL ADVISORY COMMITTEE.**

13 The Federal Advisory Committee Act (5 U.S.C. App.)
14 shall not apply to the Board established pursuant to this
15 Act.

16 **SEC. 6. ADEQUATE REPRESENTATION OF DEFENDANTS.**

17 Section 3006A(a)(2)(B)) of title 18, United States
18 Code is amended by striking “seeking relief under” and
19 inserting “seeking relief from their conviction or sentence,
20 including pursuant to”.

21 **SEC. 7. REPORT.**

22 Not later than 90 days after the date on which the
23 Board is established, the Chairperson of the Board shall
24 submit to Congress a report on the established procedures
25 for review of clemency applications and administrative

1 plans related to research and any other actions the Board
2 will be taking. This report shall include a plan for address-
3 ing pending applications, which may include augmentation
4 of staff through temporary hire or assignment to the
5 Board.

6 **SEC. 8. REPORT ON U.S. ATTORNEY CHARGING AND PLEA**
7 **PRACTICES.**

8 Not later than two years after the date of enactment
9 of this Act, the Director of the National Institute of Jus-
10 tice shall complete a review and publish a report on the
11 charging and plea bargaining practices of U.S. Attorneys'
12 Offices, including racial and gender disparities. The Direc-
13 tor may consult with the Department of Justice Office of
14 the Inspector General to secure any information necessary
15 to complete this report.

16 **SEC. 9. REPORT ON PSYCHOLOGICAL IMPACT OF INCAR-**
17 **CERATION.**

18 Not later than one year after the date of enactment
19 of this Act, the Director of the National Institute of Jus-
20 tice shall publish a report summarizing the current body
21 of research on the psychological impact of people who are
22 incarcerated. This report shall be completed in coordina-
23 tion with at least 2 individuals who have published peer-
24 reviewed scholarship or have expertise on this topic.

1 **SEC. 10. SEVERABILITY.**

2 If any application of this Act or any provision of this
3 Act to any person or circumstance is held invalid, the re-
4 mainder of this Act and the application of this Act to other
5 persons and circumstances shall not be affected by the in-
6 validity.

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