H.R.

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

IN THE HOUSE OF REPRESENTATIVES

Ms. PRESSLEY introduced the following bill; which was referred to the Committee on

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

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

(a) IN GENERAL.—There is established an independent board to be known as the “U.S. Clemency Board” (in this Act referred to as the “Board”).
(b) DUTIES.—

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

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

(B) make available applications for clemency in English and Spanish;

(C) review applications for any person convicted of a Federal offense or experiencing Federal collateral consequences requesting a pardon, commutation, remission of a fine or forfeiture or restoration of civil and political rights, not later than 18 months after submission of such application;

(D) maintain public statistics and records of all acts of clemency granted by each President;

(E) compile research reports on relevant subjects;

(F) transmit an annual report to Congress outlining the Board’s activities, feedback from applicants, and recommendations disaggregated by relevant characteristics, including age, gender identity, race and ethnicity, sexual orientation, disability, type of offense, years served,
and geographical location of the individual applying for clemency; and

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

(2) PRIORITY.—In carrying out the duties under paragraph (1), the Board shall seek guidance from the President on any priority factors for reviewing applications. Any selected priority factors shall be included in the annual report under section 7.

(c) POWER TO COMPEL.—The Board may request any Federal agency or Federal judicial officer to disclose information, data, and reports related to any application being considered for clemency. The Federal agency or Federal judicial officer shall fully disclose all relevant information, data, and reports, including presentence reports, subject to any restrictions in accordance with the law.

(d) ADMISSION OF GUILT.—The Board shall not require any applicant to admit guilt as a condition of recommendation for pardon, commutation, remission of a fine or forfeiture or restoration of civil and political rights. Any admission of guilt in an application may not be used
against an applicant in any way nor is such admission admissible in a court of law.

(c) DEFINITIONS.—In this section:

(1) CLEMENCY.—The term “clemency” includes a full pardon, partial or full commutation of sentence, or remission of a fine or forfeiture or restoration of civil and political rights.

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

SEC. 3. MEMBERSHIP.

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

(1) an individual who was formerly incarcerated;

(2) an individual who has been directly impacted by crime;

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

(4) an individual who shall serve as representative of the Department of Justice.
(b) INDEPENDENT MEMBERS.—To be a member appointed pursuant to subsection (a), except subsection (a)(4), the member shall have or have had no affiliation with the Department of Justice in the 16 years prior to such appointment.

(c) TERMS.—

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

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

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

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

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

(f) MAJORITY.—The Board shall require a majority of members present and voting to approve actions of the Board.
(g) Prohibition of Compensation of Federal Employees.—Members of the Board who are full-time officers and employees of the United States may not receive additional pay, allowances, or benefits by reason of their service on the Board.

(h) Compensation of Non-Federal Employees.—Members of the Board who are not full-time officers and employees of the United States shall each be paid at a rate equal to the rate of basic pay for level IV of the Executive Schedule by the Executive Office of the President.

(i) Travel Expenses.—Each member of the Board shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

(j) Meetings.—The Board shall meet at the call of the Chairperson not less than once a quarter each year to conduct business.
SEC. 4. ABOLITION OF OFFICE OF THE PARDON ATTORNEY;
TRANSFER OF FUNCTIONS AND PERSONNEL
OF THE OFFICE OF THE PARDON ATTORNEY
TO THE BOARD.

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

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

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

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

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

(B) paragraphs (1), (2), and (3) of such
subsection (e) shall not apply to the employee;

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

(d) Administrative Head.—The Board established under section 2 shall appoint, in consultation with the Attorney General, a Pardon Attorney to act as the administrative head of the Board. Such Pardon Attorney shall report to the Board and be paid by the Executive Office of the President.

(e) References.—Any reference in any other Federal law, executive order, rule, regulation, delegation of authority, or any document—

(1) to the head of the Office of the Pardon Attorney is deemed to be the Pardon Attorney appointed by the Board established under section 2, in consultation with the Attorney General, to act as the administrative head of the Board; or

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

(f) Exercise of Authorities.—Except as otherwise provided by law, the Board may, for the purposes of performing the functions of the Office of the Pardon Attorney, exercise all authorities under any provision of law that were available with respect to the performance
of the function immediately before the effective date of
the transfer of the function under this section.

(g) Savings Provisions.—

(1) Legal Documents.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, agreements, certificates, licenses, and privileges—

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

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

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized Government official, a court of competent jurisdiction, or operation of law.

(2) Proceedings.—This Act shall not affect any proceedings or any application for any benefits, service, license, permit, certificate, or financial as-
sistance pending on the date of the enactment of
this Act before an office abolished by this Act, but
such proceedings and applications shall be contin-
ued. Orders shall be issued in such proceedings, ap-
peals shall be taken therefrom, and payments shall
be made pursuant to such orders, as if this Act had
not been enacted, and orders issued in any such pro-
ceeding shall continue in effect until modified, termi-
nated, superseded, or revoked by a duly authorized
official, by a court of competent jurisdiction, or by
operation of law. Nothing in this subsection shall be
considered to prohibit the discontinuance or modi-
fication of any such proceeding under the same
terms and conditions and to the same extent that
such proceeding could have been discontinued or
modified if this Act had not been enacted.

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

(4) NONABATEMENT OF ACTIONS.—No suit, ac-
tion, or other proceeding commenced by or against
the Department of Justice, or by or against any in-
individually in the official capacity of such individual as an officer or employee of an office transferred by this Act, shall abate by reason of the enactment of this Act.

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

(6) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this Act, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred by this Act shall apply to the exercise of such function by the head of the Federal agency, and other officers of the agency, to which such function is transferred by this Act.

(h) TRANSFER OF ASSETS.—Except as otherwise provided in this Act, so much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available,
or to be made available in connection with a function transferred to an official or agency by this Act shall be available to the official or the head of that agency, respectively, at such time or times as the Director of the Office of Management and Budget directs for use in connection with the functions transferred.

(i) **DELEGATION AND ASSIGNMENT.**—Except as otherwise expressly prohibited by law or otherwise provided in this Act, an official to whom functions are transferred under this Act (including the head of any office to which functions are transferred under this Act) may delegate any of the functions so transferred to such officers and employees of the office of the official as the official may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions under this section or under any other provision of this Act shall relieve the official to whom a function is transferred under this Act of responsibility for the administration of the function.

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

(1) **DETERMINATIONS.**—If necessary, the Director shall make any determination of the functions that are transferred under this Act.
(2) INCIDENTAL TRANSFERS.—The Director, at such time or times as the Director shall provide, may make such determinations as may be necessary with regard to the functions transferred by this Act, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this Act. The Director shall provide for the termination of the affairs of all entities terminated by this Act and for such further measures and dispositions as may be necessary to effectuate the purposes of this Act.

(k) CERTAIN VESTING OF FUNCTIONS CONSIDERED TRANSFERS.—For purposes of this Act, the vesting of a function in a department or office pursuant to reestablishment of an office shall be considered to be transfer of the function.

(l) AVAILABILITY OF EXISTING FUNDS.—Existing appropriations and funds available for the performance of functions, programs, and activities terminated pursuant to this Act shall remain available, for the duration of their...
period of availability, for necessary expenses in connection
with the termination and resolution of such functions, pro-
grams, and activities.

(m) DEFINITIONS.—In this section:

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

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

SEC. 5. FEDERAL ADVISORY COMMITTEE.

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

SEC. 6. ADEQUATE REPRESENTATION OF DEFENDANTS.

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

SEC. 7. REPORT.

Not later than 90 days after the date on which the
Board is established, the Chairperson of the Board shall
submit to Congress a report on the established procedures
for review of clemency applications and administrative
plans related to research and any other actions the Board
will be taking. This report shall include a plan for address-
ing pending applications, which may include augmentation
of staff through temporary hire or assignment to the
Board.

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

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

SEC. 9. REPORT ON PSYCHOLOGICAL IMPACT OF INCAR-
CERATION.

Not later than one year after the date of enactment
of this Act, the Director of the National Institute of Jus-
tice shall publish a report summarizing the current body
of research on the psychological impact of people who are
incarcerated. This report shall be completed in coordina-
tion with at least 2 individuals who have published peer-
reviewed scholarship or have expertise on this topic.
SEC. 10. SEVERABILITY.

If any application of this Act or any provision of this Act to any person or circumstance is held invalid, the remainder of this Act and the application of this Act to other persons and circumstances shall not be affected by the invalidity.