HOUSE BILL REPORT
2SSB 5064

As Reported by House Committee On:
Public Safety
Appropriations Subcommittee on General Government & Information Technology

Title: An act relating to persons sentenced for offenses committed prior to reaching eighteen years of age.

Brief Description: Concerning persons sentenced for offenses committed prior to reaching eighteen years of age.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove and Kline).

Brief History:
Committee Activity:
Public Safety: 2/19/14, 2/25/14 [DPA];
Appropriations Subcommittee on General Government & Information Technology: 2/27/14 [DPA(PS)].

Brief Summary of Second Substitute Bill
(As Amended by Committee)

- Creates a new sentencing scheme for offenders convicted of Aggravated Murder in the first degree under the age of 18: (1) if under 16 years of age at the date of offense, the offender will receive an indeterminate sentence with a minimum of 25 years and a maximum term of life; or (2) if 16 or 17 years old at the time of offense, the offender will receive an indeterminate sentence with a minimum of 25 years or more and a maximum term of life.
- Provides for resentencing of offenders previously sentenced to a term of life for an offense committed under the age of 18.
- Allows a person convicted of an offense committed prior to his or her eighteenth birthday to petition the Indeterminate Sentence Review Board for early release after serving 20 years.
- Creates a task force to review the intersection of the juvenile and adult sentencing systems and make recommendations for reform.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: Do pass as amended. Signed by 11 members: Representatives Goodman, Chair; Roberts, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Holy, Hope, Moscoso, Pettigrew, Ross and Takko.

Staff: Sarah Koster (786-7303).

Background:

In June 2012 the United States Supreme Court (Supreme Court) held, in *Miller v. Alabama,* (10-9646), that the 8th Amendment ban on cruel and unusual punishment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile homicide offenders.

The Supreme Court held that when a youth is convicted of murder for an act that occurred before age 18, the sentencing judge must focus directly on the youth and assess the specific age of the individual, the youth's childhood, and life experience; weigh the degree of responsibility the youth was capable of exercising; and assess that youth's chances of becoming rehabilitated. The judge can only impose a sentence of life without parole if the judge concludes the sentence proportionally punishes the youth, given all of the factors that mitigate the youth's guilt. The Supreme Court reasoned that while it was not foreclosing the judge's ability to sentence a youth to life without parole, appropriate occasions for sentencing juveniles to this harshest penalty will be uncommon.

Under Washington law, Aggravated Murder in the first degree occurs when a person commits first degree murder and one or more aggravating circumstances are present such as: the victim was a law enforcement officer, firefighter, or other person engaged in official duties; the murder was committed in the course of a robbery, rape, burglary, kidnapping, or arson; or the murder was committed to maintain the person's membership or advancement in a gang. The crime of Aggravated Murder in the first degree is punishable by either a sentence of life imprisonment without the possibility of parole or, if sufficient mitigating factors are not present, the death penalty may be imposed. Murder in the first degree, without aggravating factors, is punishable with a term of confinement between 23 and 40 years.

Currently, there are 27 individuals serving life sentences in Washington for murders committed prior to their eighteenth birthday.

Summary of Amended Bill:

Minors Convicted of Aggravated Murder in the First Degree.
A person convicted of Aggravated Murder in the first degree for an offense committed prior to his or her eighteenth birthday will be sentenced to an indeterminate term:

1. If the offender was under 16 years of age when the offense was committed, he or she will be sentenced to a minimum term of 25 years and a maximum term of life.

2. If the offender was 16 or 17 years old when the offense was committed, he or she will be sentenced to a minimum term of 25 years or more and a maximum term of life.

In setting the minimum term for 16- or 17-year-old offenders, the sentencing court must take into account the mitigating factors that account for the diminished culpability of youth, as enumerated by the Supreme Court in *Miller v. Alabama*. The sentencing court may give a 16- or 17-year-old defendant a term of life without the possibility of parole after considering these factors.

Five years before the expiration of the offender's minimum term, the Department of Corrections (DOC) is required to conduct an assessment of the offender and identify appropriate programming to prepare the offender for return to the community. The programming will be made available to the extent possible.

Six months before the expiration of the offender's minimum term, the DOC will conduct an examination of the offender, including a prediction of the probability that the person will engage in future criminal behavior.

The Indeterminate Sentence Review Board (ISRB) will release the person, with conditions imposed as appropriate, unless it determines, by a preponderance of the evidence, that, despite any conditions, it is more likely than not that the person will commit new criminal law violations if released. The ISRB must give public safety the highest priority in making decisions. There must be an opportunity for victims to present statements to the ISRB.

If a person is not released, the ISRB will set a new minimum term of up to five additional years. If a person is released, he or she will be subject to the supervision of the DOC on community custody for a term determined by the ISRB.

Retroactivity/Resentencing.
Persons who were sentenced to life without the possibility of parole for a crime committed before their eighteenth birthday before the effective date of this bill will be returned to the sentencing court for a new sentence. The new sentence will follow the same terms as new sentences for Aggravated Murder in the first degree for an offense committed before the offender's eighteenth birthday. If a person is resentenced under this bill, no motion for collateral attack on the judgment and sentence, which would otherwise have been barred, may be filed.

A person sentenced or resentenced under this bill may not earn earned release time over 10 percent of the sentence.

Minors Given Long Sentences for Offenses Other Than Aggravated Murder in the First Degree.
A person convicted of one or more crimes, except Aggravated Murder in the first degree or a determinate plus sex offense, committed before his or her eighteenth birthday may petition the ISRB for release after serving 20 years of total confinement, provided he or she has not been convicted of any offense committed after his or her eighteenth birthday and he or she has not committed a major violation in the 12 months prior to filing the petition.

After an eligible offender has served 15 years in total confinement, the DOC is required to conduct an assessment of the offender and identify appropriate programming to prepare the offender for return to the community. The programming will be made available to the extent possible.

Within six months of receiving the petition, the DOC will conduct an examination of the offender, including a prediction of the probability that the person will engage in future criminal behavior.

The ISRB will release the person, with conditions imposed as appropriate, unless it determines, by a preponderance of the evidence, that, despite any conditions, it is more likely than not that the person will commit new criminal law violations if released. The ISRB must give public safety the highest priority in making decisions. There must be an opportunity for victims to present statements to the ISRB.

If a person is not released, he or she may file a new petition five years from the date of denial or earlier, if allowed by the ISRB. If an offender is released, he or she will be subject to the supervision of the DOC on community custody for a term determined by the ISRB.

Task Force.
The Legislature shall convene a task force to examine juvenile sentencing reform. The task force shall undertake a thorough review of juvenile sentencing as it relates to the intersection of the adult and juvenile justice systems and make recommendations for reform that promote improved outcomes for youth, public safety, and taxpayer resources. The review shall include, but is not limited to:

- the process and circumstances for transferring a juvenile to adult jurisdiction, including discretionary and mandatory decline hearings and automatic transfer to adult jurisdiction;
- sentencing standards, term lengths, sentencing enhancements, and stacking provisions that apply once a juvenile is transferred to adult jurisdiction; and
- the appropriate custody, treatment, and resources for declined youth who will complete their term of confinement prior to reaching age 21.

The task force shall report its findings and recommendation to the Governor and the appropriate committees of the Legislature by December 1, 2014.

The task force membership will include representatives from each caucus in the Senate and the House of Representatives; the Office of the Governor; the Juvenile Justice and Rehabilitation Administration; the DOC; the Superior Court Judges Association; Family and Juvenile Law Subcommittee; the Washington Association of Prosecuting Attorneys; the Washington Association of Criminal Defense Lawyers or the Washington Defender Association; the Washington Coalition of Crime Victim Advocates; the Washington Association of Juvenile Court Administrators; the Washington Association of Sheriffs and Police Chiefs; law enforcement which specifically works with juveniles; and the Sentencing Guidelines Commission.

Amended Bill Compared to Second Substitute Bill:

The amended bill:

- reduces the period of supervision for an offender released early under the bill to a period as determined by the ISRB;
- removes any bars to a collateral attack of a resentencing under this act which would not otherwise be barred by law;
- clarifies that the act does not open the initial conviction up to new collateral attack; and
- creates a task force to review juvenile sentencing as it relates to the intersection of the adult and juvenile justice systems and make recommendations for reform that promote improved outcomes for youth, public safety, and taxpayer resources.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill contains an emergency clause and takes effect on June 1, 2014.

Staff Summary of Public Testimony:

(In support) The immediate motivation for this bill is *Miller v. Alabama*. The decision did not make life without parole unavailable as a sentence to juveniles, just that the judge must have the option for other sentences. This is an opportunity to ask the Legislature to address some policy issues which have been of great concern to those who try both sides, regarding long sentences given to youthful offenders. We are learning all the time about the ability of young people to form intent. This bill is a good compromise. For a 16- or 17-year-old aggravated first degree murder defendant, the judge would have the responsibility to consider a sentence of life without parole but would not be obligated to give that sentence. This goes beyond what the *Miller* court asked them to do and reaches long sentences. It does not impose maximums. It says to offenders that are looking at a long sentence: you will have a chance for review at 20 years. There is a chance at amelioration.

The Legislature needs to do something about this because *Miller* ruled that our current system is unconstitutional as applied to juveniles. The issue of retroactivity is not decided; it was not decided in *Miller* and has been decided state-by-state all over the map. The shift from 15 to 16 years of age aligns well with other provisions in current juvenile law and policy. This is the best product which can be put forth meeting everyone's concerns.

A lot of people have worked very hard and very well on this issue to balance the competing interests. This is appropriate for legislative decision-making and a systematic response, as opposed to judicial responses. This is an opportunity to take a step forwards with regard to long sentences in the wake of *Miller*. There was a great collaborative effort that went on with this bill. There is a need for this bill from *Miller* and this bill goes further than that, in the spirit of the case. This bill should go forward as close to a version as possible to make sure it gets to the Governor's desk.

(In support with concerns) The framing of this discussion needs to be rooted in the fact that juveniles can change. That is where the science is. This bill is not perfect for anyone, which probably means it is in the right place. There should be some work with the ISRB to get it to match current procedures better. The bill balances accountability with the possibility of rehabilitation. A remaining concern is that some youth can still be sentenced to life without the possibility of parole. Positive elements are the pre-review assessments, the elimination of life without parole for those under 16, and the retroactive application of the bill. Youth traits are less fixed than adults so there is no way of knowing if a 16- or 17-year-old will change. All youths should have meaningful review; this can be done without a threat to public safety.

(With concerns) Many believe that the Supreme Court will eventually outlaw life without parole for juveniles entirely. There are still concerns about lengthy mandatory minimum sentences that are the apparent trade-off for our ability to resentence juveniles sentenced to life without parole. This does not serve the penological interest of the state. There is no evidence that 25 years is a useful period in terms of reform. The mitigating factors should be expanded to include factors besides those in *Miller* and it is not appropriate for victims to participate in the ISRB process, although that may be appropriate for a sentencing court. The DOC already does a risk assessment upon release; a future dangerousness evaluation is particularly difficult in this context and should be replaced by the regular risk assessment. There also should be a right to counsel; the ISRB hearings are very complex and counsel will help the defendants. Those released under the bill should have the right to petition for end of supervision at some point and the task force which didn't move out of the Senate can and should be added under this title.

(Information only) The ISRB has two caseloads: for those committed before 1984, the decision made by the ISRB is whether they are rehabilitated. It is an optional release, not a "shall release." For the Community Custody Board, the sex offenders sentenced post-2001, are not assigned counsel which was supported by a court decision, *McCarthy*. Counsel can be assigned if they have severe mental health issues or can't represent themselves.

(Opposed) None.

Persons Testifying: (In support) Russ Hauge and Jon Tunheim, Washington Association of Prosecuting Attorneys; David Boerner, Sentencing Guidelines Commission; and Sandy Mullins, Office of the Governor.

(In support with concerns) Travis Stearns, Washington Defender Association and Washington Association of Criminal Defense Lawyers; and Nick Allen, Columbia Legal Services.

(With concerns) Shankar Narayan, American Civil Liberties Union of Washington.

(Information only) Kecia Rongen, Indeterminate Sentence Review Board.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT & INFORMATION TECHNOLOGY

Majority Report: Do pass as amended by Committee on Public Safety. Signed by 9 members: Representatives Hudgins, Chair; Parker, Ranking Minority Member; Buys, Christian, Dunshee, S. Hunt, Jinkins, Springer and Taylor.

Staff: Alex MacBain (786-7288).

Summary of Recommendation of Committee On Appropriations Subcommittee on General Government & Information Technology Compared to Recommendation of Committee On Public Safety:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill contains an emergency clause and takes effect on June 1, 2014.

Staff Summary of Public Testimony:

(In support) The bill impacts three areas. First, is a local cost for resentencing the 27 offenders currently sentenced to life without the possibility of parole. This is a cost being imposed by the United States Supreme Court based on its decision in the *Miller* case and not a cost imposed by the Legislature on local government. Second, is a state cost for the additional workload for the Indeterminate Sentence Review Board. This cost would be far outweighed by the third impact, which is savings from incarceration costs to the Department of Corrections. Over time this bill will eventually save the state money. This is one of the most important juvenile justice bills in the last 17 years. This bill needs to be passed because current state statute has been determined to be unconstitutional. It is known that youth who are sentenced reform in different ways from adults who are sentenced.

(Opposed) None.

Persons Testifying: Tom McBride, Washington Association of Prosecuting Attorneys; Travis Stearns, Washington Defenders Association; and Chris Kossa, American Civil Liberties Union of Washington.

Persons Signed In To Testify But Not Testifying: None.