

SENATE BILL REPORT

SB 5064

As of January 28, 2013

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: Senators Hargrove and Kline.

Brief History:

Committee Activity: Law & Justice: 1/25/13.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Sharon Swanson (786-7447)

Background: In June 2012 the United States Supreme Court (Court) held, in *Miller v. Alabama*, (10-9646), that the eighth 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 Court discussed five factors to be considered when sentencing a juvenile offender:

- the child's age and its features, including immaturity, impetuosity, and failure to appreciate risks and consequences;
- the child's family and home environment;
- the circumstances of the offense, including the extent of the child's participation, and the way familial and peer pressure may have affected the child's behavior;
- the child's lack of sophistication in dealing with a criminal justice system that is designed for adults; and
- the possibility of rehabilitation.

The Court found that by removing youth from the balance, thereby subjecting a juvenile to the same life-without-parole sentence applicable to an adult, life-without-parole laws prohibit a sentencing authority from assessing whether the law's harshest term of imprisonment proportionately punishes a juvenile offender. Thus, the Court found that life without the possibility of parole for juvenile offenders violates the concept of proportionality, which is central to the eighth amendment.

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.

In Washington, the crime of aggravated first degree murder 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.

Currently, there are 27 individuals serving life sentences in Washington State for aggravated first degree murders committed prior to their 18th birthday.

Summary of Bill: An offender under the age of 18, when the offense of aggravated murder in the first degree occurred, must receive a sentence of not less than 30 years to life imprisonment. A minimum term of life may be imposed, in which case the person is ineligible for parole or early release.

During the minimum term of total confinement, the person must not be eligible for community custody, earned release time, furlough, home detention, partial confinement, work crew, work release, any other form of early release, or any other form of authorized leave or absence from the correctional facility while not in the direct custody of a corrections officer.

If an offender is released after serving the minimum term of confinement, the offender must be subject to community custody under the supervision of the Department of Corrections (DOC) and the authority of the Indeterminate Sentencing Review Board (ISRB) for any period of time the person is released from total confinement before the expiration of the maximum sentence.

No later than 180 days prior to the expiration of the person's minimum sentence, the DOC must conduct an examination of the offender to assist in predicting the dangerousness and likelihood that the offender will engage in future criminal behavior if released. The ISRB must order that the person be released unless it is determined by a preponderance of evidence that, despite conditions, it is more likely than not that the person will commit new criminal law violations if released. If the ISRB does not order that the person be released, a new minimum term of at least five additional years must be set for the person prior to future review.

During the review of the person's suitability for release, the ISRB must provide an opportunity for the victims and survivors of victims to present statements.

A person who was sentenced prior to June 1, 2013, to a term of life without the possibility of parole for an offense committed prior to their 18th birthday, must be returned to the sentencing court or the sentencing court's successor to set a minimum term. The Court may exercise its discretion to set a minimum term of up to life. The minimum term must not be less than 30 years. The Court must provide an opportunity for victims and survivors of victims to present statements.

Any person convicted of one or more crimes committed prior to the person's 18th birthday may petition the ISRB for early release after serving no less than 30 years of total confinement, provided the person has not been convicted for any crime committed after their 18th birthday, the person has not committed a major violation in the 12 months prior to filing

the petition for early release, and the current sentence was not imposed under the aggravated first degree murder statute.

Appropriation: None.

Fiscal Note: Requested on January 20, 2013.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on June 1, 2013.

Staff Summary of Public Testimony: PRO: The United States Supreme Court recently ruled that juveniles can no longer be automatically sentenced to life imprisonment. This ruling requires a change to Washington State law. The Washington Association of Prosecuting Attorneys (WAPA) has a three part recommendation that includes amending the sentencing law for persons under the age of 18 who commit aggravated first degree murder. Additionally, WAPA advocates that the 27 people currently sentenced to life for crimes committed prior to turning 18 be resentenced, even though the Supreme Court decision does not specifically require this. Finally, WAPA recommends that all offenders who have served at least 30 years for crimes committed prior to their 18th birthday be eligible for presumptive release after 30 years, regardless of the length of their sentence. Aggravated 1st degree murder is the most serious crime a person can commit. The most serious sentencing must be imposed on people who commit such heinous crimes. The scientific community now recognizes that people under 18 have not fully developed neurologically. We also know that childhood experiences and trauma have impacts on young people. We believe that this bill finds the right balance – a long sentence of 30 years, but also provides an opportunity for people to change and possibly return to society. We hope this bill makes it through the process this year as our current laws are not in compliance with the Supreme Court ruling. We hope the Legislature takes this opportunity to determine what the law will be, rather than waiting for the courts to do it for us.

CON: The Supreme Court recognizes that children are constitutionally different than adults. The simple solution here is to prohibit a person under the age of 18 from the aggravated murder statute. No juvenile should be eligible for life imprisonment. This bill is constitutionally deficient.

OTHER: Ordinarily, the ISRB sets review in one year intervals. If an inmate does not meet the criteria, the ISRB sets up expectations for that person and then, for the most part, reviews the case again in one year. In some instances we can set the review process out farther. This bill mandates five-year intervals and does not specify if the ISRB sets expectations. Adolescents do not read emotions as well as adults do. Studies show that adolescents use more of the emotional region of the brain and less of the thinking parts of the brain. The juvenile brain continues to change and develop throughout their teens and into their mid-20's. Adolescents are more likely to behave impulsively, using a more primitive, emotional part of the brain. Sentencing adolescents to life in prison is unlikely to deter them from crime because their brains are immature. Juveniles are more inclined to think in the present and are not as likely or able to contemplate long-term consequences. Less than 10 percent of serious and violent adolescent offenders continue with high levels of criminal behavior into early

adulthood. Insurance companies have conducted research into the adolescent brain for decades. This is why people under the age of 25 cannot rent a car and why insurance rates for adolescents, especially adolescent males, are much higher. Imposing a minimum term of 30 years fails to take into account the fact that these offenses are committed by children. Columbia Legal Services favor imposing a minimum term of not more than 20 years. The specific factors that the court in the Miller case used in determining sentences for minors should also be put in statute. There should be greater discretion in setting minimum terms before subsequent review as five-year intervals are too long. When an offender who was sentenced to life comes up for review, there should be an expert on childhood brain development available to provide information to the ISRB. There should be a return to parole in Washington State. It does not make fiscal sense or social sense to keep people locked up for decades past the time they pose a threat.

Persons Testifying: PRO: Tom McBride, WAPA; Jon Tunheim, Thurston County Prosecuting Attorney.

CON: Bob Cooper, WA Assn. of Criminal Defense Lawyers; WA Defender Assn.

OTHER: Lynne DeLano, ISRB; Nick Allen, Columbia Legal Services; Dr. Terry Lee, Division of Public Behavioral Health and Justice Policy at University of Washington School of Medicine.; Jeff Coats, citizen; Grace T. Lothrop, People 4 Parole.