SENATE BILL REPORT
2SSB 5064

As Amended by House, March 7, 2014

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: Law & Justice: 1/25/13, 2/04/13, 2/21/13 [DPS, DNP].
Human Services & Corrections: 1/30/14, 2/05/14 [DP2S].
Passed Senate: 2/12/14, 48-0.
Passed House: 3/07/14, 74-23.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5064 be substituted therefor, and the substitute bill do pass.
Signed by Senators Padden, Chair; Pearson, Roach and Carrell.

Minority Report: Do not pass.
Signed by Senators Kline, Ranking Member; Darneille and Kohl-Welles.

Staff: Sharon Swanson (786-7447)

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Second Substitute Senate Bill No. 5064 be substituted therefor, and the second substitute bill do pass.
Signed by Senators O'Ban, Chair; Pearson, Vice Chair; Darneille, Ranking Member; Hargrove and Padden.

Staff: Shani Bauer (786-7468)

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.

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 held when a youth is convicted of murder 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 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 first degree murder 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 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. First degree murder, 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 State for aggravated first degree murders committed prior to their 18th birthday.

Summary of Second Substitute Bill: A youth who commits aggravated first degree murder must be sentenced to a 25-year minimum sentence if the youth committed the crime before age 16 or a minimum sentence between 25 years and life if the youth committed the crime at age 16 or 17. Life without parole is available within the discretion of the judge. In setting a minimum term, the court must take into account mitigating factors that account for the diminished culpability of youth as provided in *Miller vs. Alabama*.

A person who was sentenced prior to June 1, 2014, 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 consistent with the provisions of this act. 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 Intermediate Sentence Review Board (ISRB) for early release after serving no less than 20 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.

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. DOC must assess a youthful offender five years prior to release and provide programming to prepare offender for reentry.

No later than 180 days prior to the expiration of the person's minimum sentence, 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 not to exceed five 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.

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

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill (Law & Justice):
Testimony From 2013 Regular Session.
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 (Law & Justice):
Persons Testifying From 2013 Regular Session.
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.

Staff Summary of Public Testimony on Substitute (Human Services & Corrections):
PRO: The only part of current law that is contrary to the *Miller* decision is the mandatory imposition of life without parole for aggravated first degree murder. The Supreme Court has not expressed a desire to make all life without parole unconstitutional for juveniles. Right now there is a critical gap in the law. The Legislature needs to act because currently there is

no authority to impose a sentence of life without parole. This bill addresses the functional equivalent of a life sentence because there is a good chance the court will apply similar reasoning to those types of sentences. The bill sets a minimum amount of accountability and allows the judge to retain discretion to enter a life sentence for particularly heinous cases. Retroactivity was not specifically addressed by *Miller*. This bill is proactive on this point, allowing juveniles sentenced prior to the effective date of this law to be resentenced. Some juveniles deserve a life sentence. For example, an individual in Kitsap County was 17 years and 9 months old when he raped and murdered an 84 year old woman. In certain aggravated cases such as these, the court should have the discretion to enter a sentence of life without parole. This bill is an effort to get out in front of the *Miller* decision and what we know about brain science. When a juvenile is involved in a gang situation and ends up with a sentence of 120 years due to poor decision-making, this bill gives them the ability to rehabilitate and get out of the community with lots of life yet.

CON: This bill has some positive points – specifically, the eligibility for parole and retroactive application. A minimum term of 30 years is too long and the possibility of life without parole should be taken off the table. A youth's brain is not fully developed until the youth is in their twenties. Recent developments in brain research supports that youth are different from adults. Review gives the courts the ability to wait until the person's brain fully develops before determining whether they can be rehabilitated. Public safety is not compromised, because there is no guarantee of release. It costs approximately $2 million to incarcerate a youth for life. Youth should be held accountable but should be given a second chance. A youth is scared, and time does not mean much when you are facing a sentence. However, once the youth grows up, the youth has a chance to be come a productive member of society. If there is to be a legislative fix, life without parole should be taken off of the table. Because of the potential for youth to rehabilitate, this is not appropriate. It is impossible to tell at the time of sentencing which youth might be able to be rehabilitated. No child or teenager deserves life without parole before it is determined what type of person the youth will be. If the Legislature is going to give a youth a chance to make it, give them a review after 15 or 20 years rather than 30. There needs to be a balance for accountability and an opportunity for reform.

OTHER: If the ISRB determines not to release the offender, Section 9 (3)(c) requires the board to set a new minimum term of at least five years. A new minimum term not to exceed five years is more appropriate to give the offender some incentive to participate in programming.

Persons Testifying (Human Services & Corrections): PRO: Russ Hauge, Kitsap County Prosecuting Attorney's Office (PAO), WA Assn. of Prosecuting Attorneys (WAPA); Jon Tunheim, Thurston County PAO, WAPA.

CON: Nick Allen, Columbia Legal Services; Shankar Naryan, American Civil Liberties Union of WA; Miguel Perez-Gibson, Progresso; Travis Stearns, WA Defender Assn; Dolphy Jordan, Jeff Coats, citizens.

OTHER: Lynne De Lano, ISRB.

House Amendment(s): An offender who is released prior to expiration of the offender's maximum sentence under the terms of the bill is subject to a period of supervision as determined by the ISRB, rather than the term of the offender's maximum sentence.

Language clarifies that resentencing under the provisions of the act will not open the original judgment and sentence to collateral attack; however, the provisions do not prevent challenge of a resentencing order under the provisions of the law. A taskforce is established 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.