

HOUSE BILL REPORT

HB 1319

As Reported by House Committee On: Public Safety

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

Brief Description: Making technical corrections to processes for persons sentenced for offenses committed prior to reaching eighteen years of age.

Sponsors: Representatives Goodman and Moscoso; by request of Department of Corrections.

Brief History:

Committee Activity:

Public Safety: 1/30/15, 2/6/15 [DPS].

Brief Summary of Substitute Bill

- Requires the Department of Corrections (DOC) to supervise any offender released by the Indeterminate Sentence Review Board (ISRB) and who was sentenced to community custody or subject to community custody under the terms of release.
- Allows the DOC to release persons convicted of one or more crimes committed prior to the person's eighteenth birthday, who were released by the ISRB, notwithstanding mandatory sentencing enhancements.
- Prohibits an offender convicted of Aggravated first degree Murder prior to the person's eighteenth birthday from receiving earned early release time during the minimum term of confinement imposed by the court.
- Allows the ISRB, at its discretion, to return an offender to confinement if the offender has violated a condition of community custody.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Goodman, Chair; Orwall, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Griffey, Pettigrew and Wilson.

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.

Staff: Cassie Jones (786-7303).

Background:

In June of 2012 the United States Supreme Court held, in *Miller v. Alabama*, 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. In 2013 the law was amended to comply with *Miller v. Alabama*. Youth who commit Aggravated first degree Murder must be sentenced to a 25-year minimum sentence if the youth committed the crime before age 16 years old, or a minimum sentence between 25 years and life, if the youth committed the crime at age 16 or 17 years old. Life without parole is available within the discretion of the judge for youths who commit Aggravated first degree Murder at age 16 or 17 years old. In setting a minimum term, the court must take into account mitigating factors as provided in *Miller v. Alabama*.

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. No later than 180 days prior to the expiration of the person's minimum sentence, the Department of Corrections (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 Indeterminate Sentencing Review Board (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. 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 DOC and the authority of the ISRB for a period of time as determined by the ISRB.

Any person convicted of one or more crimes committed prior to his or her eighteenth birthday may petition the ISRB for early release after serving no less than 20 years in total confinement, provided that the person has not had any new convictions subsequent to the person's eighteenth birthday, has not had a major violation in the 12 months prior to the petition, and is not serving a sentence for Aggravated first degree Murder or a sex offense.

Summary of Substitute Bill:

The DOC must supervise any offender who is released by the ISRB and who was sentenced to community custody or subject to community custody under the terms of release.

The DOC may release offenders from confinement when their release has been ordered by the ISRB, regardless of any mandatory sentence enhancements for firearms, deadly weapons, and sexual motivation.

An offender convicted of Aggravated first degree Murder prior to his or her eighteenth birthday may not earn early release time during the minimum term of confinement set by the court.

A juvenile offender released by the ISRB, who has been convicted of Aggravated first degree Murder, may be returned to confinement at the discretion of the ISRB when the offender has violated a condition of community custody. The ISRB shall set a new minimum term of incarceration not to exceed five years.

A juvenile offender released by the ISRB, other than those convicted of aggravated first degree murder or a sex offense, may be returned to confinement at the discretion of the ISRB for up to the remainder of the court-imposed term of incarceration when the offender has violated a condition of community custody. The offender may file a new petition for release five years from the date of return to confinement or at an earlier date set by the ISRB.

Substitute Bill Compared to Original Bill:

The substitute bill clarifies that an offender who committed a crime prior to his or her eighteenth birthday and was released by the ISRB may be returned to confinement at the discretion of the ISRB when the offender has violated a condition of community custody.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) This bill is being brought forward at the request of the DOC. There was a major bill passed last year eliminating mandatory life without parole for juveniles. There are a number of resentencing proceedings coming up based on this law. There are also a number of individuals coming up for review who were sentenced long ago and have reached the stage when they can petition for release. Last year's bill did not give the DOC permission to release or supervise the offenders deemed releasable.

This is a technical but simple and important fix to allow for release and supervision of offenders released by the ISRB. The bill is very consistent with last year's policy. There may be an amendment that seems reasonable. The concerns are about giving unlimited discretion to the ISRB for returning individuals to custody.

(In support with concerns) The current version of the bill does not indicate that a community custody violation triggers return to custody; one could conclude that the current bill gives the ISRB unlimited discretion to return someone to custody. This needs to be clarified in an

amendment. The bill, with the potential amendment, just clarifies what was always the intent of all parties in the negotiation to make the process function.

(Opposed) None.

Persons Testifying: (In support) Representative Goodman, prime sponsor; Anna Aylward, Department of Corrections; and Tom McBride, Washington Association of Prosecuting Attorneys.

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

Persons Signed In To Testify But Not Testifying: None.