

# SENATE BILL REPORT

## SHB 1319

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As of March 23, 2015

**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:** House Committee on Public Safety (originally sponsored by Representatives Goodman and Moscoso; by request of Department of Corrections).

**Brief History:** Passed House: 3/06/15, 98-0.

**Committee Activity:** Human Services, Mental Health & Housing: 3/16/15.

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### SENATE COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH & HOUSING

**Staff:** Lindsay Erickson (786-7465)

**Background:** In June 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*. Second Substitute Senate Bill 5064 created a new sentencing scheme for juvenile offenders convicted of aggravated first degree murder and required that these juvenile offenders 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 for youths who commit aggravated first degree murder at age 16 or 17. 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 Sentence Review Board (ISRB) must order that the

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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 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 the person's 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 Bill:** 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.

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

An offender convicted of aggravated first degree murder prior to the offender's eighteenth birthday may not earn early release time during the minimum term of confinement set by the court.

An 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 if the offender is found to have violated a condition of community custody. The offender is entitled to a hearing pursuant to RCW 9.95.435. The ISRB must set a new minimum term of incarceration not to exceed five years.

An 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 if the offender is found to have violated a condition of community custody. The offender is entitled to a hearing pursuant to RCW 9.95.435. 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.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony:** PRO: This is a technical corrections bill and allows for better implementation of the law from last year. This allows offenders to be brought back if they violate provisions of community custody. There are about 28 or 29 resentencings that are now coming up, so the emergency clause contained in the bill would allow for those immediate reviews to take place. No one as of yet has been seen as “releasable,” but there are cases getting much closer in that process. The ISRB is currently pending a decision, and if that person were to be released prior to this bill being enacted, the released person would not be supervised. The amended bill as before committee solves the problems pointed out in earlier hearing testimony regarding due process. Some of these offenders will have a difficult time being released, having grown up in custody. But a growing population of offenders will be able to receive services up to five years prior to their release.

**Persons Testifying:** PRO: Representative Goodman, prime sponsor; Anna Aylward, Assistant Secretary Community Corrections, DOC; Bob Cooper, WA Assn. of Criminal Defense Lawyers, WA Defender Assn.

**Persons Signed in to Testify But Not Testifying:** No one.