

# HOUSE BILL REPORT

## HB 1540

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**As Reported by House Committee On:**  
Public Safety

**Title:** An act relating to persons sentenced in adult court for certain serious offenses committed prior to reaching age eighteen.

**Brief Description:** Sentencing for certain serious offenses committed by persons under eighteen.

**Sponsors:** Representatives Goodman, Frame, Appleton and Ormsby.

**Brief History:**

**Committee Activity:**

Public Safety: 1/29/19, 2/21/19 [DPS].

**Brief Summary of Substitute Bill**

- Modifies the sentencing requirements for youth convicted of Aggravated Murder in the first degree.
- Modifies the eligibility criteria for petitioning the Indeterminate Sentence Review Board for early release from a sentence for a crime committed as a youth.

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### 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; Davis, Vice Chair; Sutherland, Assistant Ranking Minority Member; Appleton, Lovick, Orwall, Pellicciotti and Pettigrew.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Klippert, Ranking Minority Member; Graham.

**Staff:** Kelly Leonard (786-7147).

**Background:**

Adult v. Juvenile Court Jurisdiction.

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*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, adults charged with felony crimes have their cases heard in the superior court system. Sentences for adults are prescribed according to certain ranges and other requirements established in state statute. Juvenile courts are a division of the superior court system. These courts have jurisdiction over youth under age 18 (referred to as "youth") charged with criminal offenses. Convictions in juvenile court generally result in shorter sentences than those in adult court, with a greater emphasis placed on rehabilitation.

A prosecutor may petition a juvenile court to transfer a youth to adult court under certain circumstances. In addition to discretionary transfer, state statute requires automatic decline of jurisdiction to the adult court for certain youth. Youth ages 16 and 17 are automatically declined to adult court when charged with certain serious violent offenses, including Aggravated Murder in the first degree. Once a youth is transferred to adult court, he or she is subject to the same sentencing laws as adults, with some exceptions.

#### Aggravated Murder in the First Degree.

A person is guilty of Aggravated Murder in the first degree if he or she commits Murder in the first degree and one or more of 14 statutory aggravating circumstances are present. Aggravated Murder in the first degree is the most serious criminal offense under state law, mandating the severest consequences. Prior to 2005, a conviction of Aggravated Murder in the first degree resulted in either a sentence of life imprisonment without the possibility of release or, if sufficient mitigating factors were not present, the death penalty. However, federal and state court decisions have reduced or modified sentences for the offense.

In 2005 the United States Supreme Court held, in *Roper v. Simmons*, that the Eighth Amendment ban on cruel and unusual punishment forbids the imposition of a sentence of death for youth offenders. Then, in 2012, the United States Supreme Court held, in *Miller v. Alabama*, that the Eighth Amendment also forbids a sentencing scheme automatically mandating life in prison without the possibility of release for youth offenders.

Following *Miller v. Alabama*, the state modified the statutes governing Aggravated Murder. Youth who commit Aggravated Murder in the first degree must be sentenced to a 25-year minimum sentence if the youth committed the crime under age 16, or a minimum sentence of between 25 years and life if the youth committed the crime at age 16 or 17. Life without the possibility of release is available at the discretion of the judge for youths who commit the crime at age 16 or 17. In setting a minimum term, the court must take into account mitigating factors established in *Miller v. Alabama*. When the new law went into effect, persons serving sentences for Aggravated Murder in the first degree committed as youth were resentenced by the superior courts.

After a youth has completed his or her minimum term for Aggravated Murder in the first degree, the Indeterminate Sentence Review Board (ISRB) must review his or her case for the possibility of release. The ISRB must order release unless it is determined by a preponderance of evidence that, despite conditions, it is more likely than not that the person will commit new crimes if released. If the ISRB does not order release, the ISRB must set a new minimum term not to exceed an additional five years. If an offender is released, the

offender is subject to community custody under the supervision of the Department of Corrections (DOC) and the authority of the ISRB for a specified period of time.

In 2018 the Washington Supreme Court held, in *State v. Bassett*, that life in prison without the possibility of release for youth offenders constitutes cruel punishment in violation of Article 1, section 14 of the state Constitution. The court found that the state's prior changes to the Aggravated Murder in the first degree law were unconstitutional insofar as they still authorize the court to sentence youth offenders to life in prison without the possibility of release for acts committed at age 16 or 17.

In 2018 the Washington Supreme Court also held, in *State v. Gregory*, that the death penalty provisions for adult offenders, as applied, are unconstitutional.

#### Other Crimes Resulting in Long Sentences.

In 2013 the state established procedures for reviewing certain offenders who committed their crimes as youth for possible early release, often referred to as "Juvenile Board cases." Any person convicted of one or more crimes committed under age 18 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 after turning age 18, has not had a major violation in the 12 months prior to the petition, and is not serving a sentence for Aggravated Murder in the first degree or a sex offense. The review, release, and supervision requirements for Juvenile Board cases are similar to those established for youth convicted of Aggravated Murder in the first degree.

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#### **Summary of Substitute Bill:**

##### Aggravated Murder in the First Degree.

Sentences for Aggravated Murder in the first degree committed by youth offenders are modified. The statutory authority to sentence a youth offender to life in prison without the possibility of release is removed.

When sentencing a youth offender for the offense, the court must sentence the youth to an indeterminate range with a fixed minimum term of 25 years and a maximum term determined by the court. The maximum may not exceed a life sentence. When determining the maximum term, the court must take into account any demonstrated progress towards rehabilitation following the commission of the crime in addition to the current factors in statute.

The sentence must be served concurrently with sentences imposed for any other current offenses. After serving the minimum term, a youth offender is eligible for review by the ISRB as provided in current law.

All persons incarcerated for Aggravated Murder in the first degree committed prior to the effective date of the bill and under age 18 must be resentenced in superior court.

### Other Crimes Resulting in Long Sentences.

The eligibility criteria for Juvenile Board cases are modified. The restriction against petitioning for a person with a separate conviction of an offense occurring after his or her eighteenth birthday is removed. Those youth offenders can petition the ISRB after serving at least 25 years for the offenses committed when under age 18 and the entire sentences for the offenses committed as an adult.

The DOC must promptly conduct assessments and provide programming to offenders who will be eligible to petition for release within five years of the effective date of the bill.

### **Substitute Bill Compared to Original Bill:**

The current requirement for courts to impose a fixed minimum of 25 years for persons under age 16 convicted of Aggravated Murder is restored. In addition, courts are required to impose a fixed minimum of 25 years for persons age 16 and 17 convicted of Aggravated Murder (rather than authorizing the court to impose a longer minimum as provided in current law, or any minimum up to 25 years as provided in the underlying bill).

The provisions in the underlying bill allowing a person who committed a separate offense when he or she was age 18 or older to apply to the ISRB for early release for other offenses committed when under age 18 are modified. The person must serve at least 25 years for the offenses committed when under age 18 (rather than 20 years as provided in the underlying bill) and the entire sentences for the offenses committed as an adult. The DOC must promptly conduct assessments and provide programming to offenders who will be eligible to petition for release within five years of the effective date of the bill.

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**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on February 22, 2019.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

### **Staff Summary of Public Testimony:**

(In support) This bill is a response to a series of United States Supreme Court and Washington Supreme Court decisions pertaining to the sentencing of juveniles. Most recently, the Washington Supreme Court issued a decision in *State v. Basset* holding that the current statutory sentencing requirements for juveniles convicted of Aggravated Murder are unconstitutional insofar as they still allow for life sentences without the possibility of release. In addition, the *State v. Houston-Sconiers* decision calls into question all mandatory minimums for juveniles.

While the state did attempt to address sentencing of juveniles with the previous "*Miller Fix*" bills, practitioners and courts have been dealing with ongoing issues with these sentencing requirements. This bill is an appropriate response. First, it eliminates the distinction between those under age 16 and those age 16 or 17. Youth age 16 and 17 are not intrinsically more culpable. In each case, the court should make an individualized assessment as to the appropriate sentence, which can include a consideration of age. Both the minimum and maximum sentences should be established by the court. Any sentencing scheme that does not give courts full discretion may be unconstitutional.

The changes to juvenile board cases are also important. While the state should require those offenders to serve the term for the adult conviction, they should not otherwise be barred from applying to the ISRB for possible release from the juvenile convictions.

(Opposed) The bill, as drafted, creates a disparity between youth convicted of Aggravated Murder and other youth convicted of serious offenses under the Sentencing Reform Act. A youth convicted of Aggravated Murder could become eligible for release earlier than someone convicted of a less serious offense. In addition, the bill does not provide any guidance as to the minimum sentence, regardless of the nature of the offense or the number of homicide victims. Someone could have been convicted of multiple homicides and serious offenses, and those offenses could be served concurrently with relatively small sentences.

*Miller* and *Basset* address a relatively narrow set of cases, around 30 convictions since the 1980s. Importantly, these offenders were already resentenced after the "*Miller Fix*." This bill would resentence all of these offenders again, requiring the victims to appear in court yet again to relive the horror. The state should not reopen these wounds. Aggravated Murder cases are often the most serious, most gruesome and horrific cases in the criminal justice system.

**Persons Testifying:** (In support) Representative Goodman, prime sponsor; and Nick Allen, Columbia Legal Services.

(Opposed) Russell Brown, Washington Association of Prosecuting Attorneys.

**Persons Signed In To Testify But Not Testifying:** None.