
SUBSTITUTE HOUSE BILL 1540

State of Washington

66th Legislature

2019 Regular Session

By House Public Safety (originally sponsored by Representatives Goodman, Frame, Appleton, and Ormsby)

READ FIRST TIME 02/22/19.

1 AN ACT Relating to persons sentenced in adult court for certain
2 serious offenses committed prior to reaching age eighteen; amending
3 RCW 9.94A.730, 10.95.030, 10.95.035, and 9.94A.510; and prescribing
4 penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 9.94A.730 and 2015 c 134 s 6 are each amended to
7 read as follows:

8 (1) (a) Notwithstanding any other provision of this chapter, any
9 person convicted of one or more crimes committed prior to the
10 person's eighteenth birthday may petition the indeterminate sentence
11 review board for early release from sentences for those crimes after
12 serving no less than twenty years of total confinement, provided the
13 person has not been convicted for any crime committed subsequent to
14 the person's eighteenth birthday, the person has not committed a
15 disqualifying serious infraction as defined by the department in the
16 twelve months prior to filing the petition for early release, and the
17 current sentence was not imposed under RCW 10.95.030 or 9.94A.507.

18 (b) Notwithstanding any other provision of this chapter, a person
19 who has been convicted for any crime committed subsequent to the
20 person's eighteenth birthday may petition for early release for
21 crimes committed prior to the person's eighteenth birthday, provided

1 that: (i) He or she has served no less than twenty-five years of
2 total confinement for sentences for those crimes committed prior to
3 the person's eighteenth birthday; (ii) he or she has served the full
4 sentences for all crimes committed subsequent to the person's
5 eighteenth birthday; (iii) he or she has not committed a
6 disqualifying serious infraction as defined by the department in the
7 twelve months prior to filing the petition for early release; and
8 (iv) the current sentence was not imposed under RCW 10.95.030 or
9 9.94A.507.

10 (2) (a) No later than five years prior to the date the offender
11 will be eligible to petition for release, the department shall
12 conduct an assessment of the offender and identify programming and
13 services that would be appropriate to prepare the offender for return
14 to the community. To the extent possible, the department shall make
15 programming available as identified by the assessment.

16 (b) For an offender who is eligible to petition for release under
17 subsection (1)(b) of this section within five years of the effective
18 date of this section, the department shall promptly conduct an
19 assessment of the offender and identify programming and services that
20 would be appropriate to prepare the offender for return to the
21 community. To the extent possible, the department shall make
22 programming available as identified by the assessment on an expedited
23 basis.

24 (3) No later than one hundred eighty days from receipt of the
25 petition for early release, the department shall conduct, and the
26 offender shall participate in, an examination of the person,
27 incorporating methodologies that are recognized by experts in the
28 prediction of dangerousness, and including a prediction of the
29 probability that the person will engage in future criminal behavior
30 if released on conditions to be set by the board. The board may
31 consider a person's failure to participate in an evaluation under
32 this subsection in determining whether to release the person. The
33 board shall order the person released under such affirmative and
34 other conditions as the board determines appropriate, unless the
35 board determines by a preponderance of the evidence that, despite
36 such conditions, it is more likely than not that the person will
37 commit new criminal law violations if released. The board shall give
38 public safety considerations the highest priority when making all
39 discretionary decisions regarding the ability for release and
40 conditions of release.

1 (4) In a hearing conducted under subsection (3) of this section,
2 the board shall provide opportunities for victims and survivors of
3 victims of any crimes for which the offender has been convicted to
4 present statements as set forth in RCW 7.69.032. The procedures for
5 victim and survivor of victim input shall be provided by rule. To
6 facilitate victim and survivor of victim involvement, county
7 prosecutor's offices shall ensure that any victim impact statements
8 and known contact information for victims of record and survivors of
9 victims are forwarded as part of the judgment and sentence.

10 (5) An offender released by the board is subject to the
11 supervision of the department for a period of time to be determined
12 by the board, up to the length of the court-imposed term of
13 incarceration. The department shall monitor the offender's compliance
14 with conditions of community custody imposed by the court or board
15 and promptly report any violations to the board. Any violation of
16 conditions of community custody established or modified by the board
17 are subject to the provisions of RCW 9.95.425 through 9.95.440.

18 (6) An offender whose petition for release is denied may file a
19 new petition for release five years from the date of denial or at an
20 earlier date as may be set by the board.

21 (7) An offender released under the provisions of this section may
22 be returned to the institution at the discretion of the board if the
23 offender is found to have violated a condition of community custody.
24 The offender is entitled to a hearing pursuant to RCW 9.95.435. If
25 the board finds that the offender has committed a new violation, the
26 board may return the offender to the institution for up to the
27 remainder of the court-imposed term of incarceration. The offender
28 may file a new petition for release five years from the date of
29 return to the institution or at an earlier date as may be set by the
30 board.

31 **Sec. 2.** RCW 10.95.030 and 2015 c 134 s 5 are each amended to
32 read as follows:

33 (1) Except as provided in subsections (2) and (3) of this
34 section, any person convicted of the crime of aggravated first degree
35 murder shall be sentenced to life imprisonment without possibility of
36 release or parole. A person sentenced to life imprisonment under this
37 section shall not have that sentence suspended, deferred, or commuted
38 by any judicial officer and the indeterminate sentence review board
39 or its successor may not parole such prisoner nor reduce the period

1 of confinement in any manner whatsoever including but not limited to
2 any sort of good-time calculation. The department of social and
3 health services or its successor or any executive official may not
4 permit such prisoner to participate in any sort of release or
5 furlough program.

6 (2) If, pursuant to a special sentencing proceeding held under
7 RCW 10.95.050, the trier of fact finds that there are not sufficient
8 mitigating circumstances to merit leniency, the sentence shall be
9 death. In no case, however, shall a person be sentenced to death if
10 the person had an intellectual disability at the time the crime was
11 committed, under the definition of intellectual disability set forth
12 in (a) of this subsection. A diagnosis of intellectual disability
13 shall be documented by a licensed psychiatrist or licensed
14 psychologist designated by the court, who is an expert in the
15 diagnosis and evaluation of intellectual disabilities. The defense
16 must establish an intellectual disability by a preponderance of the
17 evidence and the court must make a finding as to the existence of an
18 intellectual disability.

19 (a) "Intellectual disability" means the individual has: (i)
20 Significantly subaverage general intellectual functioning; (ii)
21 existing concurrently with deficits in adaptive behavior; and (iii)
22 both significantly subaverage general intellectual functioning and
23 deficits in adaptive behavior were manifested during the
24 developmental period.

25 (b) "General intellectual functioning" means the results obtained
26 by assessment with one or more of the individually administered
27 general intelligence tests developed for the purpose of assessing
28 intellectual functioning.

29 (c) "Significantly subaverage general intellectual functioning"
30 means intelligence quotient seventy or below.

31 (d) "Adaptive behavior" means the effectiveness or degree with
32 which individuals meet the standards of personal independence and
33 social responsibility expected for his or her age.

34 (e) "Developmental period" means the period of time between
35 conception and the eighteenth birthday.

36 (3) (a) ~~((i))~~ Any person convicted of the crime of aggravated
37 first degree murder for an offense committed prior to the person's
38 ~~((sixteenth))~~ eighteenth birthday shall be sentenced to a ~~((maximum~~
39 ~~term of life imprisonment and a minimum term))~~ range of total
40 confinement with a minimum term of twenty-five years and a maximum

1 term determined by the court. The maximum term may not exceed a life
2 sentence. Sentences imposed under this section must be served
3 concurrently with sentences imposed for any other current offenses.

4 ~~((ii) Any person convicted of the crime of aggravated first~~
5 ~~degree murder for an offense committed when the person is at least~~
6 ~~sixteen years old but less than eighteen years old shall be sentenced~~
7 ~~to a maximum term of life imprisonment and a minimum term of total~~
8 ~~confinement of no less than twenty-five years. A minimum term of life~~
9 ~~may be imposed, in which case the person will be ineligible for~~
10 ~~parole or early release.))~~

11 (b) In setting ~~((a minimum))~~ the maximum term, the court must
12 take into account mitigating factors that account for the diminished
13 culpability of youth as provided in *Miller v. Alabama*, ~~((132 S.Ct.~~
14 ~~2455))~~ 567 U.S. 460 (2012) including, but not limited to, the age of
15 the individual, the youth's childhood and life experience, the degree
16 of responsibility the youth was capable of exercising, ~~((and))~~ the
17 youth's chances of becoming rehabilitated, and any progress towards
18 rehabilitation demonstrated by the youth following the commission of
19 the crime for which he or she is being sentenced.

20 (c) A person sentenced under this subsection shall serve the
21 sentence in a facility or institution operated, or utilized under
22 contract, by the state. During the minimum term of total confinement,
23 the person shall not be eligible for community custody, earned
24 release time, furlough, home detention, partial confinement, work
25 crew, work release, or any other form of early release authorized
26 under RCW 9.94A.728, or any other form of authorized leave or absence
27 from the correctional facility while not in the direct custody of a
28 corrections officer. The provisions of this subsection shall not
29 apply: (i) In the case of an offender in need of emergency medical
30 treatment; or (ii) for an extraordinary medical placement when
31 authorized under RCW 9.94A.728 ~~((3))~~ (1)(c).

32 (d) Any person sentenced pursuant to this subsection shall be
33 subject to community custody under the supervision of the department
34 of corrections and the authority of the indeterminate sentence review
35 board. As part of any sentence under this subsection, the court shall
36 require the person to comply with any conditions imposed by the
37 board.

38 (e) No later than five years prior to the expiration of the
39 person's minimum term, the department of corrections shall conduct an
40 assessment of the offender and identify programming and services that

1 would be appropriate to prepare the offender for return to the
2 community. To the extent possible, the department shall make
3 programming available as identified by the assessment.

4 (f) No later than one hundred eighty days prior to the expiration
5 of the person's minimum term, the department of corrections shall
6 conduct, and the offender shall participate in, an examination of the
7 person, incorporating methodologies that are recognized by experts in
8 the prediction of dangerousness, and including a prediction of the
9 probability that the person will engage in future criminal behavior
10 if released on conditions to be set by the board. The board may
11 consider a person's failure to participate in an evaluation under
12 this subsection in determining whether to release the person. After
13 serving his or her minimum sentence, the board shall order the person
14 released, under such affirmative and other conditions as the board
15 determines appropriate, unless the board determines by a
16 preponderance of the evidence that, despite such conditions, it is
17 more likely than not that the person will commit new criminal law
18 violations if released. If the board does not order the person
19 released, the board shall set a new minimum term not to exceed five
20 additional years. The board shall give public safety considerations
21 the highest priority when making all discretionary decisions
22 regarding the ability for release and conditions of release.

23 (g) In a hearing conducted under (f) of this subsection, the
24 board shall provide opportunities for victims and survivors of
25 victims of any crimes for which the offender has been convicted to
26 present statements as set forth in RCW 7.69.032. The procedures for
27 victim and survivor of victim input shall be provided by rule. To
28 facilitate victim and survivor of victim involvement, county
29 prosecutor's offices shall ensure that any victim impact statements
30 and known contact information for victims of record and survivors of
31 victims are forwarded as part of the judgment and sentence.

32 (h) An offender released by the board is subject to the
33 supervision of the department of corrections for a period of time to
34 be determined by the board, up to the length of the court-imposed
35 maximum term of incarceration. The department shall monitor the
36 offender's compliance with conditions of community custody imposed by
37 the court or board and promptly report any violations to the board.
38 Any violation of conditions of community custody established or
39 modified by the board are subject to the provisions of RCW 9.95.425
40 through 9.95.440.

1 (i) An offender released or discharged under this section may be
2 returned to the institution at the discretion of the board if the
3 offender is found to have violated a condition of community custody.
4 The offender is entitled to a hearing pursuant to RCW 9.95.435. The
5 board shall set a new minimum term of incarceration not to exceed
6 five years.

7 **Sec. 3.** RCW 10.95.035 and 2015 c 134 s 7 are each amended to
8 read as follows:

9 (1) A person, who was sentenced prior to ~~((June 1, 2014, under~~
10 ~~this chapter or any prior law, to a term of life without the~~
11 ~~possibility of parole for an offense))~~ the effective date of this
12 section and is still incarcerated as of the effective date of this
13 section for a conviction of aggravated murder committed prior to
14 ~~((their))~~ his or her eighteenth birthday, shall be returned to the
15 sentencing court or the sentencing court's successor for sentencing
16 consistent with RCW 10.95.030 and Miller v. Alabama, 567 U.S. 460
17 (2012). The release and supervision of a person ~~((who receives a~~
18 ~~minimum term of less than life))~~ resentenced pursuant to this section
19 will be governed by RCW 10.95.030.

20 (2) The court shall provide an opportunity for victims and
21 survivors of victims of any crimes for which the offender has been
22 convicted to present a statement personally or by representation.

23 (3) The court's order setting a minimum term is subject to review
24 to the same extent as a minimum term decision by the parole board
25 before July 1, 1986.

26 (4) A resentencing under this section shall not reopen the
27 defendant's conviction to challenges that would otherwise be barred
28 by RCW 10.73.090, 10.73.100, 10.73.140, or other procedural barriers.

29 **Sec. 4.** RCW 9.94A.510 and 2014 c 130 s 1 are each amended to
30 read as follows:

31 TABLE 1
32 Sentencing Grid

33 SERIOUSNESS

34 LEVEL OFFENDER SCORE

35 9 or

36 0 1 2 3 4 5 6 7 8 more

XVI Life sentence without parole/death penalty for offenders at or over the age of
 eighteen. For offenders under the age of eighteen, ((a term of twenty-five years to
 life)) an indeterminate term pursuant to RCW 10.95.030.

XV	23y4m	24y4m	25y4m	26y4m	27y4m	28y4m	30y4m	32y10m36y	40y	
	240-	250-	261-	271-	281-	291-	312-	338-	370-	411-
	320	333	347	361	374	388	416	450	493	548
XIV	14y4m	15y4m	16y2m	17y	17y11m	18y9m	20y5m	22y2m	25y7m	29y
	123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
	220	234	244	254	265	275	295	316	357	397
XIII	12y	13y	14y	15y	16y	17y	19y	21y	25y	29y
	123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
	164	178	192	205	219	233	260	288	342	397
XII	9y	9y11m	10y9m	11y8m	12y6m	13y5m	15y9m	17y3m	20y3m	23y3m
	93-	102-	111-	120-	129-	138-	162-	178-	209-	240-
	123	136	147	160	171	184	216	236	277	318
XI	7y6m	8y4m	9y2m	9y11m	10y9m	11y7m	14y2m	15y5m	17y11m20y5m	
	78-	86-	95-	102-	111-	120-	146-	159-	185-	210-
	102	114	125	136	147	158	194	211	245	280
X	5y	5y6m	6y	6y6m	7y	7y6m	9y6m	10y6m	12y6m	14y6m
	51-	57-	62-	67-	72-	77-	98-	108-	129-	149-
	68	75	82	89	96	102	130	144	171	198
IX	3y	3y6m	4y	4y6m	5y	5y6m	7y6m	8y6m	10y6m	12y6m
	31-	36-	41-	46-	51-	57-	77-	87-	108-	129-
	41	48	54	61	68	75	102	116	144	171
VIII	2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m
	21-	26-	31-	36-	41-	46-	67-	77-	87-	108-
	27	34	41	48	54	61	89	102	116	144
VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m
	15-	21-	26-	31-	36-	41-	57-	67-	77-	87-
	20	27	34	41	48	54	75	89	102	116
VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m
	12+-	15-	21-	26-	31-	36-	46-	57-	67-	77-

1		14	20	27	34	41	48	61	75	89	102
2	V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
3		6-	12+-	13-	15-	22-	33-	41-	51-	62-	72-
4		12	14	17	20	29	43	54	68	82	96
5	IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
6		3-	6-	12+-	13-	15-	22-	33-	43-	53-	63-
7		9	12	14	17	20	29	43	57	70	84
8	III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
9		1-	3-	4-	9-	12+-	17-	22-	33-	43-	51-
10		3	8	12	12	16	22	29	43	57	68
11	II		4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m
12		0-90	2-	3-	4-	12+-	14-	17-	22-	33-	43-
13		Days	6	9	12	14	18	22	29	43	57
14	I			3m	4m	5m	8m	13m	16m	20m	2y2m
15		0-60	0-90	2-	2-	3-	4-	12+-	14-	17-	22-
16		Days	Days	5	6	8	12	14	18	22	29

17 Numbers in the first horizontal row of each seriousness category
18 represent sentencing midpoints in years(y) and months(m). Numbers in
19 the second and third rows represent standard sentence ranges in
20 months, or in days if so designated. 12+ equals one year and one day.

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