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HOUSE BILL 1540

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State of Washington

66th Legislature

2019 Regular Session

By Representatives Goodman, Frame, Appleton, and Ormsby

Read first time 01/23/19. Referred to Committee on Public Safety.

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) 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 offenses  
12 after serving no less than twenty years of total confinement,  
13 provided (~~the person has not been convicted for any crime committed~~  
14 ~~subsequent to the person's eighteenth birthday,~~) the person has not  
15 committed a disqualifying serious infraction as defined by the  
16 department in the twelve months prior to filing the petition for  
17 early release, and the current sentence was not imposed under RCW  
18 10.95.030 or 9.94A.507.

19 (2) No later than five years prior to the date the offender will  
20 be eligible to petition for release, the department shall conduct an  
21 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 (3) No later than one hundred eighty days from receipt of the  
5 petition for early release, the department shall conduct, and the  
6 offender shall participate in, an examination of the person,  
7 incorporating methodologies that are recognized by experts in the  
8 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. The  
13 board shall order the person released under such affirmative and  
14 other conditions as the board determines appropriate, unless the  
15 board determines by a preponderance of the evidence that, despite  
16 such conditions, it is more likely than not that the person will  
17 commit new criminal law violations if released. The board shall give  
18 public safety considerations the highest priority when making all  
19 discretionary decisions regarding the ability for release and  
20 conditions of release.

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

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

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

1 (7) An offender released under the provisions of this section may  
2 be 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. If  
5 the board finds that the offender has committed a new violation, the  
6 board may return the offender to the institution for up to the  
7 remainder of the court-imposed term of incarceration. The offender  
8 may file a new petition for release five years from the date of  
9 return to the institution or at an earlier date as may be set by the  
10 board.

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

13 (1) Except as provided in subsections (2) and (3) of this  
14 section, any person convicted of the crime of aggravated first degree  
15 murder shall be sentenced to life imprisonment without possibility of  
16 release or parole. A person sentenced to life imprisonment under this  
17 section shall not have that sentence suspended, deferred, or commuted  
18 by any judicial officer and the indeterminate sentence review board  
19 or its successor may not parole such prisoner nor reduce the period  
20 of confinement in any manner whatsoever including but not limited to  
21 any sort of good-time calculation. The department of social and  
22 health services or its successor or any executive official may not  
23 permit such prisoner to participate in any sort of release or  
24 furlough program.

25 (2) If, pursuant to a special sentencing proceeding held under  
26 RCW 10.95.050, the trier of fact finds that there are not sufficient  
27 mitigating circumstances to merit leniency, the sentence shall be  
28 death. In no case, however, shall a person be sentenced to death if  
29 the person had an intellectual disability at the time the crime was  
30 committed, under the definition of intellectual disability set forth  
31 in (a) of this subsection. A diagnosis of intellectual disability  
32 shall be documented by a licensed psychiatrist or licensed  
33 psychologist designated by the court, who is an expert in the  
34 diagnosis and evaluation of intellectual disabilities. The defense  
35 must establish an intellectual disability by a preponderance of the  
36 evidence and the court must make a finding as to the existence of an  
37 intellectual disability.

38 (a) "Intellectual disability" means the individual has: (i)  
39 Significantly subaverage general intellectual functioning; (ii)

1 existing concurrently with deficits in adaptive behavior; and (iii)  
2 both significantly subaverage general intellectual functioning and  
3 deficits in adaptive behavior were manifested during the  
4 developmental period.

5 (b) "General intellectual functioning" means the results obtained  
6 by assessment with one or more of the individually administered  
7 general intelligence tests developed for the purpose of assessing  
8 intellectual functioning.

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

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

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

16 (3) (a) ~~((i))~~ Any person convicted of the crime of aggravated  
17 first degree murder for an offense committed prior to the person's  
18 ~~((sixteenth))~~ eighteenth birthday shall be sentenced to a range of  
19 total confinement with a maximum term ~~((of life imprisonment))~~  
20 minimum term ~~((of total confinement of))~~. The maximum term may not  
21 exceed a life sentence, and the minimum term may not exceed twenty-  
22 five years. Sentences imposed under this section must be served  
23 concurrently with sentences imposed for any other current offenses.

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

31 (b) In setting ~~((a))~~ maximum and minimum terms, the court must  
32 take into account mitigating factors that account for the diminished  
33 culpability of youth as provided in *Miller v. Alabama*, ~~((132 S.Ct.~~  
34 ~~2455))~~ 567 U.S. 460 (2012) including, but not limited to, the age of  
35 the individual, the youth's childhood and life experience, the degree  
36 of responsibility the youth was capable of exercising, ~~((and))~~  
37 youth's chances of becoming rehabilitated, and any progress towards  
38 rehabilitation demonstrated by the youth following the commission of  
39 the crime for which he or she is being sentenced.

1 (c) A person sentenced under this subsection shall serve the  
2 sentence in a facility or institution operated, or utilized under  
3 contract, by the state. During the minimum term of total confinement,  
4 the person shall not be eligible for community custody, earned  
5 release time, furlough, home detention, partial confinement, work  
6 crew, work release, or any other form of early release authorized  
7 under RCW 9.94A.728, or any other form of authorized leave or absence  
8 from the correctional facility while not in the direct custody of a  
9 corrections officer. The provisions of this subsection shall not  
10 apply: (i) In the case of an offender in need of emergency medical  
11 treatment; or (ii) for an extraordinary medical placement when  
12 authorized under RCW 9.94A.728(~~(3)~~) (1)(c).

13 (d) Any person sentenced pursuant to this subsection shall be  
14 subject to community custody under the supervision of the department  
15 of corrections and the authority of the indeterminate sentence review  
16 board. As part of any sentence under this subsection, the court shall  
17 require the person to comply with any conditions imposed by the  
18 board.

19 (e) No later than five years prior to the expiration of the  
20 person's minimum term, the department of corrections shall conduct an  
21 assessment of the offender and identify programming and services that  
22 would be appropriate to prepare the offender for return to the  
23 community. To the extent possible, the department shall make  
24 programming available as identified by the assessment.

25 (f) No later than one hundred eighty days prior to the expiration  
26 of the person's minimum term, the department of corrections shall  
27 conduct, and the offender shall participate in, an examination of the  
28 person, incorporating methodologies that are recognized by experts in  
29 the prediction of dangerousness, and including a prediction of the  
30 probability that the person will engage in future criminal behavior  
31 if released on conditions to be set by the board. The board may  
32 consider a person's failure to participate in an evaluation under  
33 this subsection in determining whether to release the person. The  
34 board shall order the person released, under such affirmative and  
35 other conditions as the board determines appropriate, unless the  
36 board determines by a preponderance of the evidence that, despite  
37 such conditions, it is more likely than not that the person will  
38 commit new criminal law violations if released. If the board does not  
39 order the person released, the board shall set a new minimum term not  
40 to exceed five additional years. The board shall give public safety

1 considerations the highest priority when making all discretionary  
2 decisions regarding the ability for release and conditions of  
3 release.

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

13 (h) An offender released by the board is subject to the  
14 supervision of the department of corrections for a period of time to  
15 be determined by the board. The department shall monitor the  
16 offender's compliance with conditions of community custody imposed by  
17 the court or board and promptly report any violations to the board.  
18 Any violation of conditions of community custody established or  
19 modified by the board are subject to the provisions of RCW 9.95.425  
20 through 9.95.440.

21 (i) An offender released or discharged under this section may be  
22 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. The  
25 board shall set a new minimum term of incarceration not to exceed  
26 five years.

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

29 (1) A person, who was sentenced prior to ~~((June 1, 2014, under~~  
30 ~~this chapter or any prior law, to a term of life without the~~  
31 ~~possibility of parole for an offense))~~ the effective date of this  
32 section and is still incarcerated as of the effective date of this  
33 section for a conviction of aggravated murder committed prior to  
34 ~~((their))~~ his or her eighteenth birthday, shall be returned to the  
35 sentencing court or the sentencing court's successor for sentencing  
36 consistent with RCW 10.95.030 and Miller v. Alabama, 567 U.S. 460  
37 (2012). The release and supervision of a person ~~((who receives a~~  
38 ~~minimum term of less than life))~~ resentenced pursuant to this section  
39 will be governed by RCW 10.95.030.

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

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

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

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

12 TABLE 1  
 13 Sentencing Grid

SERIOUSNESS										
LEVEL	OFFENDER SCORE									
	0	1	2	3	4	5	6	7	8	9 or more
XVI	Life sentence without parole/death penalty for offenders at or over the age of eighteen. For offenders under the age of eighteen, <del>((a term of twenty-five years to life))</del> an indeterminate term pursuant to RCW 10.95.030.									
XV	23y4m	24y4m	25y4m	26y4m	27y4m	28y4m	30y4m	32y10m	36y	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	17y11m	20y5m
	78-	86-	95-	102-	111-	120-	146-	159-	185-	210-

1		102	114	125	136	147	158	194	211	245	280
2	X	5y	5y6m	6y	6y6m	7y	7y6m	9y6m	10y6m	12y6m	14y6m
3		51-	57-	62-	67-	72-	77-	98-	108-	129-	149-
4		68	75	82	89	96	102	130	144	171	198
5	IX	3y	3y6m	4y	4y6m	5y	5y6m	7y6m	8y6m	10y6m	12y6m
6		31-	36-	41-	46-	51-	57-	77-	87-	108-	129-
7		41	48	54	61	68	75	102	116	144	171
8	VIII	2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m
9		21-	26-	31-	36-	41-	46-	67-	77-	87-	108-
10		27	34	41	48	54	61	89	102	116	144
11	VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m
12		15-	21-	26-	31-	36-	41-	57-	67-	77-	87-
13		20	27	34	41	48	54	75	89	102	116
14	VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m
15		12+-	15-	21-	26-	31-	36-	46-	57-	67-	77-
16		14	20	27	34	41	48	61	75	89	102
17	V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
18		6-	12+-	13-	15-	22-	33-	41-	51-	62-	72-
19		12	14	17	20	29	43	54	68	82	96
20	IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
21		3-	6-	12+-	13-	15-	22-	33-	43-	53-	63-
22		9	12	14	17	20	29	43	57	70	84
23	III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
24		1-	3-	4-	9-	12+-	17-	22-	33-	43-	51-
25		3	8	12	12	16	22	29	43	57	68
26	II		4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m
27		0-90	2-	3-	4-	12+-	14-	17-	22-	33-	43-
28		Days	6	9	12	14	18	22	29	43	57
29	I			3m	4m	5m	8m	13m	16m	20m	2y2m
30		0-60	0-90	2-	2-	3-	4-	12+-	14-	17-	22-
31		Days	Days	5	6	8	12	14	18	22	29



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

--- **END** ---