
Public Safety Committee

HB 1344

Brief Description: Allowing qualifying persons serving long sentences committed prior to reaching 25 years of age to seek review for possible release from incarceration.

Sponsors: Representatives Hackney, Harris-Talley, Berry, Fitzgibbon, Simmons, Ramel, Walen, Morgan, Santos, Peterson, Davis, Ormsby, Bateman, Frame and Pollet.

Brief Summary of Bill

- Allows a person incarcerated for an offense committed under age 25 to petition the Indeterminate Sentence Review Board (ISRB) for release after serving 15 years, with some exceptions, and requires the ISRB to release the person unless he or she is likely to commit new crimes.
- Eliminates the sentence of life without the possibility of release for Aggravated Murder in the first degree committed between the ages of 16 and 25. Requires a sentence of 25 years to life, with review for release by the ISRB after serving 25 years, for any person who commits the offense between the age of 16 and 25, and requires the ISRB to release a person after he or she serves the minimum term unless he or she is likely to commit new crimes.

Hearing Date: 2/9/21

Staff: Kelly Leonard (786-7147).

Background:

In 1981 the Legislature passed the Sentencing Reform Act (SRA), which established determinate sentencing for persons convicted of felony offenses. The SRA eliminated indeterminate sentences and parole in Washington, with some exceptions. Instead, the SRA determines a

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specific sentence within the statutory maximum. Judges select a sentence within a range provided in statute, which is calculated using both a statutory severity designation for the offense, or its "seriousness level," and the person's "offender score," which is based on the offender's criminal history. In addition to the standard range, other factors affect the sentence, including: enhancements; exceptional sentences; consecutive/concurrent sentences; persistent offender ("Three Strikes" and "Two Strikes") laws; and alternative sentences.

Review of Sentences for Offenses Committed as Juveniles.

Juvenile offenses are typically adjudicated in the juvenile court system. When adjudicated in the juvenile court system, offenses result in shorter sentences with a greater emphasis placed on rehabilitation. However, a prosecutor may petition a juvenile court to transfer a juvenile to adult court under certain circumstances. In addition to discretionary transfer, state statute requires persons ages 16 and 17 to be automatically declined to adult court when charged with certain serious violent offenses. Once a juvenile is transferred to adult court, he or she is subject to the same sentencing laws as adults, with some exceptions.

In 2013 the state established procedures for persons who committed their crimes under age 18 to seek review 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 Indeterminate Sentence Review Board (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 with a determinate-plus sentence.

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 person may petition again in five years or at an earlier date determined by the ISRB. If a person is released, the person 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.

There are also other exceptions to determinate sentencing where certain persons are eligible for review after serving a minimum term. This includes, for example, persons convicted before the enactment of the SRA, July 1, 1984, and sex offenders who have "determinate-plus" sentences.

Specialized Sentencing for Aggravated Murder.

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. Adults and juveniles convicted of the offense are subject to different sentencing requirements.

Juveniles Convicted of Aggravated Murder. Juveniles who commit the offense when under age

16 must receive a sentence of 25 years to life, and juveniles who commit the offense when age 16 or 17 must receive a minimum sentence set by the court, ranging from 25 years to life, with a maximum sentence of life. In setting a minimum term, the court must take into account mitigating factors established by the U.S. Supreme Court in *Miller v. Alabama*, 567 U.S. 460 (2012).

In *State v. Bassett*, 192 Wn.2d 67 (2018), the Washington Supreme Court held that sentences of life without the possibility of release for juveniles constitute cruel punishment in violation of Article 1, section 14 of the state Constitution. The Court found that the sentencing provisions applicable to a person who committed the offense when age 16 or 17 are unconstitutional insofar as they still authorize a sentence of life without the possibility of release.

Under the current statutory framework, the ISRB must review a person for the possibility of release after he or she has completed his or her minimum term. 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. The ISRB procedures for review, release, and community custody are similar to those for other offenses committed by juveniles.

Adults Convicted of Aggravated Murder. Prior to 2018, an adult convicted of Aggravated Murder in the first degree received either a sentence of life without the possibility of release or, if sufficient mitigating factors were not present, a death sentence. In *State v. Gregory*, 192 Wn.2d 1 (2018), the Washington Supreme Court held that the death penalty, as applied, is unconstitutional. As a result, adults (age 18 and above) convicted of the offense are sentenced to life without the possibility of release.

Summary of Bill:

Review of Sentences for Offenses Committed Under Age 25.

The review and release procedures currently available for persons serving long sentences committed as juveniles are expanded. Any person convicted of one or more crimes committed under age 25 may petition the ISRB for early release after serving no less than 15 years in total confinement, provided that the person has not had any new convictions after turning age 25, 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 with a determinate-plus sentence.

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 person may petition again in five years or at an earlier date determined by the ISRB. If a person is released, the person is subject to community custody under the supervision of the DOC and the authority of the ISRB for a specified period of time.

Specialized Sentencing for Aggravated Murder.

The sentence of life without the possibility of release is eliminated for persons who commit Aggravated Murder in the first degree when under age 25. Instead, a person who commits the offense when between the ages of 16 and 25 must receive a sentence of 25 years to life. The ISRB must review the person for possibility of release after he or she has completed his or her minimum term. 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. The process and requirements for review, release, and supervision under community custody are the same as above.

Persons currently serving a sentence for Aggravated Murder in the first degree committed between the ages of 16 and 25 must be resentenced according to the new sentencing requirements.

Appropriation: None.

Fiscal Note: Requested on February 2, 2021.

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