S-0665.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SENATE BILL 5451**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 68th Legislature 2023 Regular Session**

**By** Senators Frame, Saldaña, Hasegawa, Kuderer, Lovelett, Nguyen, and Valdez

AN ACT Relating to allowing qualifying persons serving long sentences committed prior to reaching 25 years of age to seek review for possible release from incarceration; amending RCW 9.94A.510, 9.94A.540, 9.94A.570, 9.94A.730, and 10.95.030; reenacting and amending RCW 9.94A.728; adding a new section to chapter 10.95 RCW; and creating new sections.

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

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

TABLE 1

Sentencing Grid

|  |  |
| --- | --- |
| SERIOUSNESSLEVEL | OFFENDER SCORE |
|  | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 ormore |
| XVI |  Life sentence without parole/death penalty for offenders at or over the age of ((~~eighteen~~)) 25. For offenders under the age of ((~~eighteen~~)) 25, a term of ((~~twenty-five~~)) 25 years to life. |
| 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- |
|  | 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- |
|  | 14  | 20 | 27 | 34 | 41 | 48 | 61 | 75 | 89 | 102 |
| V | 9m | 13m | 15m | 18m | 2y2m | 3y2m | 4y | 5y | 6y | 7y |
|  | 6- | 12+- | 13- | 15- | 22- | 33- | 41- | 51- | 62- | 72- |
|  | 12 | 14 | 17 | 20 | 29 | 43 | 54 | 68 | 82 | 96 |
| IV | 6m | 9m | 13m | 15m | 18m | 2y2m | 3y2m | 4y2m | 5y2m | 6y2m |
|  | 3- | 6- | 12+- | 13- | 15- | 22- | 33- | 43- | 53- | 63- |
|  | 9 | 12 | 14 | 17 | 20 | 29 | 43 | 57 | 70 | 84 |
| III | 2m | 5m | 8m | 11m | 14m | 20m | 2y2m | 3y2m | 4y2m | 5y |
|  | 1- | 3- | 4- | 9- | 12+- | 17- | 22- | 33- | 43- | 51- |
|  | 3  | 8  | 12 | 12 | 16 | 22 | 29 | 43 | 57 | 68 |
| II |  | 4m | 6m | 8m | 13m | 16m | 20m | 2y2m | 3y2m | 4y2m |
|  | 0-90 | 2- | 3- | 4- | 12+- | 14- | 17- | 22- | 33- | 43- |
|  | Days | 6  | 9  | 12 | 14 | 18 | 22 | 29 | 43 | 57 |
| I |  |  | 3m | 4m | 5m | 8m | 13m | 16m | 20m | 2y2m |
|  | 0-60 | 0-90 | 2- | 2- | 3- | 4- | 12+- | 14- | 17- | 22- |
|  | Days | Days | 5  | 6  | 8  | 12 | 14  | 18 | 22 | 29 |

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

**Sec.**  RCW 9.94A.540 and 2014 c 130 s 2 are each amended to read as follows:

(1) Except to the extent provided in subsection (3) of this section, the following minimum terms of total confinement are mandatory and shall not be varied or modified under RCW 9.94A.535:

(a) An offender convicted of the crime of murder in the first degree shall be sentenced to a term of total confinement not less than ((~~twenty~~)) 20 years.

(b) An offender convicted of the crime of assault in the first degree or assault of a child in the first degree where the offender used force or means likely to result in death or intended to kill the victim shall be sentenced to a term of total confinement not less than five years.

(c) An offender convicted of the crime of rape in the first degree shall be sentenced to a term of total confinement not less than five years.

(d) An offender convicted of the crime of sexually violent predator escape shall be sentenced to a minimum term of total confinement not less than ((~~sixty~~)) 60 months.

(e) An offender convicted of the crime of aggravated first degree murder for a murder that was committed prior to the offender's ((~~eighteenth~~)) 25th birthday shall be sentenced to a term of total confinement not less than ((~~twenty-five~~)) 25 years.

(2) During such minimum terms of total confinement, no offender subject to the provisions of this section is eligible for community custody, earned release time, furlough, home detention, partial confinement, work crew, work release, or any other form of early release authorized under RCW 9.94A.728, or any other form of authorized leave of absence from the correctional facility while not in the direct custody of a corrections officer. The provisions of this subsection shall not apply: (a) In the case of an offender in need of emergency medical treatment; (b) for the purpose of commitment to an inpatient treatment facility in the case of an offender convicted of the crime of rape in the first degree; ((~~or~~)) (c) for an extraordinary medical placement when authorized under RCW 9.94A.728((~~(3)~~)) (1)(c); or (d) for release approved by the board under RCW 9.94A.730.

(3)(a) Subsection (1)(a) through (d) of this section shall not be applied in sentencing of juveniles tried as adults pursuant to RCW 13.04.030(1)(e)(i).

(b) This subsection (3) applies only to crimes committed on or after July 24, 2005.

**Sec.**  RCW 9.94A.570 and 2000 c 28 s 6 are each amended to read as follows:

(1) Notwithstanding the statutory maximum sentence or any other provision of this chapter, a persistent offender shall be sentenced to a term of total confinement for life without the possibility of release or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death. ((~~In addition, no offender subject to this section may be~~))

(2) A persistent offender is not eligible for community custody, earned release time, furlough, home detention, partial confinement, work crew, work release, or any other form of release as defined under RCW 9.94A.728(1)((~~, (2), (3), (4), (6), (8), or (9)~~)) (b), (c), (e), (h), and (i), or any other form of authorized leave from a correctional facility while not in the direct custody of a corrections officer or officers, except: (1) In the case of an offender in need of emergency medical treatment; or (2) for the purpose of commitment to an inpatient treatment facility in the case of an offender convicted of the crime of rape in the first degree.

(3) A persistent offender may be released from confinement by the board under RCW 9.94A.730 or 10.95.030(3).

**Sec.**  RCW 9.94A.728 and 2021 c 311 s 19 and 2021 c 266 s 2 are each reenacted and amended to read as follows:

(1) No person serving a sentence imposed pursuant to this chapter and committed to the custody of the department shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

(a) An offender may earn early release time as authorized by RCW 9.94A.729;

(b) An offender may leave a correctional facility pursuant to an authorized furlough or leave of absence. In addition, offenders may leave a correctional facility when in the custody of a corrections officer or officers;

(c)(i) The secretary may authorize an extraordinary medical placement for an offender when all of the following conditions exist:

(A) The offender has a medical condition that is serious and is expected to require costly care or treatment;

(B) The offender poses a low risk to the community because he or she is currently physically incapacitated due to age or the medical condition or is expected to be so at the time of release; and

(C) It is expected that granting the extraordinary medical placement will result in a cost savings to the state.

(ii) An offender sentenced to death or to life imprisonment without the possibility of release or parole is not eligible for an extraordinary medical placement.

(iii) The secretary shall require electronic monitoring for all offenders in extraordinary medical placement unless the electronic monitoring equipment interferes with the function of the offender's medical equipment or results in the loss of funding for the offender's medical care, in which case, an alternative type of monitoring shall be utilized. The secretary shall specify who shall provide the monitoring services and the terms under which the monitoring shall be performed.

(iv) The secretary may revoke an extraordinary medical placement under this subsection (1)(c) at any time.

(v) Persistent offenders are not eligible for extraordinary medical placement;

(d) The governor, upon recommendation from the clemency and pardons board, may grant an extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances;

(e) No more than the final ((~~twelve~~)) 12 months of the offender's term of confinement may be served in partial confinement for aiding the offender with: Finding work as part of the work release program under chapter 72.65 RCW; or reestablishing himself or herself in the community as part of the parenting program in RCW 9.94A.6551. This is in addition to that period of earned early release time that may be exchanged for partial confinement pursuant to RCW 9.94A.729(5)(d);

(f)(i) No more than the final five months of the offender's term of confinement may be served in partial confinement as home detention as part of the graduated reentry program developed by the department under RCW 9.94A.733(1)(a);

(ii) For eligible offenders under RCW 9.94A.733(1)(b), after serving at least four months in total confinement in a state correctional facility, an offender may serve no more than the final 18 months of the offender's term of confinement in partial confinement as home detention as part of the graduated reentry program developed by the department;

(g) The governor may pardon any offender;

(h) The department may release an offender from confinement any time within ((~~ten~~)) 10 days before a release date calculated under this section;

(i) An offender may leave a correctional facility prior to completion of his or her sentence if the sentence has been reduced as provided in RCW 9.94A.870;

(j) Notwithstanding any other provisions of this section, an offender sentenced for a felony crime listed in RCW 9.94A.540 as subject to a mandatory minimum sentence of total confinement shall not be released from total confinement before the completion of the listed mandatory minimum sentence for that felony crime of conviction unless allowed under RCW 9.94A.540; and

(k) Any person convicted of one or more crimes committed prior to the person's ((~~eighteenth~~)) 25th birthday may be released from confinement pursuant to RCW 9.94A.730.

(2) Notwithstanding any other provision of this section, an offender entitled to vacation of a conviction or the recalculation of his or her offender score pursuant to *State v. Blake*, No. 96873-0 (Feb. 25, 2021), may be released from confinement pursuant to a court order if the offender has already served a period of confinement that exceeds his or her new standard range. This provision does not create an independent right to release from confinement prior to resentencing.

(3) Offenders residing in a juvenile correctional facility placement pursuant to RCW 72.01.410(1)(a) are not subject to the limitations in this section.

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

(1) Notwithstanding any other provision of this chapter, any person convicted of one or more crimes committed prior to the person's ((~~eighteenth~~)) 25th birthday may petition the indeterminate sentence review board for early release after serving no less than ((~~twenty~~)) 15 years of total confinement, provided the person has not been convicted for any crime committed subsequent to the person's ((~~eighteenth~~)) 25th birthday, the person has not committed a disqualifying serious infraction as defined by the department in the ((~~twelve~~)) 12 months prior to filing the petition for early release, and the current sentence was not imposed under RCW 10.95.030 or 9.94A.507.

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

(3) No later than ((~~one hundred eighty~~)) 180 days from receipt of the petition for early release, the department shall conduct, and the offender shall participate in, an examination of the person, incorporating methodologies that are recognized by experts in the prediction of dangerousness, and including a prediction of the probability that the person will engage in future criminal behavior if released on conditions to be set by the board. The board may consider a person's failure to participate in an evaluation under this subsection in determining whether to release the person. The board shall order the person released under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the person will commit new criminal law violations if released. The board shall give public safety considerations the highest priority when making all discretionary decisions regarding the ability for release and conditions of release.

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

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

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

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

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

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

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

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

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

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

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

(e) "Developmental period" means the period of time between conception and the ((~~eighteenth~~)) 18th birthday.

(3)(a)((~~(i)~~)) Any person convicted of the crime of aggravated first degree murder for an offense committed prior to the person's ((~~sixteenth~~)) 25th birthday shall be sentenced to a maximum term of life imprisonment and a minimum term of total confinement of ((~~twenty-five~~)) 25 years.

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

~~(b) In setting a minimum term, the court must take into account mitigating factors that account for the diminished culpability of youth as provided in~~ *~~Miller v. Alabama~~*~~, 132 S.Ct. 2455 (2012) including, but not limited to, the age of the individual, the youth's childhood and life experience, the degree of responsibility the youth was capable of exercising, and the youth's chances of becoming rehabilitated.~~

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

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

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

((~~(f)~~)) (e) No later than ((~~one hundred eighty~~)) 180 days prior to the expiration of the person's minimum term, the department of corrections shall conduct, and the offender shall participate in, an examination of the person, incorporating methodologies that are recognized by experts in the prediction of dangerousness, and including a prediction of the probability that the person will engage in future criminal behavior if released on conditions to be set by the board. The board may consider a person's failure to participate in an evaluation under this subsection in determining whether to release the person. The board shall order the person released, under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the person will commit new criminal law violations if released. If the board does not order the person released, the board shall set a new minimum term not to exceed five additional years. The board shall give public safety considerations the highest priority when making all discretionary decisions regarding the ability for release and conditions of release.

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

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

((~~(i)~~)) (h) An offender released or discharged under this section may be returned to the institution at the discretion of the board 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 board shall set a new minimum term of incarceration not to exceed five years.

NEW SECTION. **Sec.**  A new section is added to chapter 10.95 RCW to read as follows:

(1) A person, who was sentenced prior to the effective date of this section, under this chapter or any prior law, to a term of life without the possibility of parole for an offense committed on or after his or her 16th birthday and prior to his or her 25th birthday, shall be returned to the sentencing court or the sentencing court's successor for sentencing consistent with RCW 10.95.030. Release and supervision of a person resentenced under this section is governed by RCW 10.95.030.

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

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

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

NEW SECTION. **Sec.**  This act applies retroactively to persons incarcerated on the effective date of this section, regardless of the date of the offense or conviction.

NEW SECTION. **Sec.**  This act does not create any right or entitlement to release from incarceration before the end of a term of incarceration imposed by the court.

**--- END ---**