

SENATE BILL REPORT

SB 5451

As of February 14, 2023

Title: 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.

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: Senators Frame, Saldaña, Hasegawa, Kuderer, Lovelett, Nguyen and Valdez.

Brief History:

Committee Activity: Law & Justice: 2/14/23.

Brief Summary of Bill

- Requires courts to sentence individuals convicted of aggravated first degree murder where the murder was committed prior to the offender's 25th birthday a maximum term of life imprisonment and a minimum term of total confinement of 25 years.
- Permits individuals convicted of one or more crimes committed prior to the person's 25th birthday to petition the Indeterminate Sentencing Review Board for early release after serving no less than 15 years of total confinement in certain circumstances.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Joe McKittrick (786-7287)

Background: Life Sentences for Youthful Offenders. In 2012, the United State Supreme Court held, in *Miller v. Alabama (Miller)*, that the eighth amendment ban on cruel and unusual punishment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile homicide offenders.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

The court held that when a youth is convicted of murder that occurred before the perpetrator turned 18, the sentencing court must focus on factors specific to that person, such as the person's specific age, childhood circumstances, and life experience. The court must also weigh the degree of responsibility the person is capable of exercising and the likelihood of rehabilitation. The court may only impose a sentence of life without parole if it concludes the sentence proportionally punishes the person given all the mitigating factors. The court, in *Miller*, case reasoned that while it is not foreclosing the ability of courts to sentence youth to life without parole, appropriate occasions for sentencing juveniles to this penalty will be rare.

After the *Miller* decision, the Washington State Supreme Court found Article 1, section 14 of the Washington constitution prohibited life without parole sentences for juveniles and required courts to exercise complete discretion to consider mitigating circumstances associated with the youthfulness of any juvenile defendant, even when faced with mandatory statutory language. The court also found that a mandatory life without parole sentence was unconstitutional when applied to offenders under 21 who were convicted of aggravated murder in the first degree if the court does not engage in an individualized inquiry to determine whether the mitigating qualities of youth justified a downward departure.

Under Washington Law, aggravated first degree murder occurs when a person commits first degree murder and certain aggravating circumstances exists such as the victim being a firefighter or law enforcement officer, or the murder occurred after the perpetrator escaped from prison. This crime is punishable by a sentence of life imprisonment without the possibility of parole for offenders at or over the age of 18, and a term of imprisonment of 25 years to life for offenders under 18.

A person who commits aggravated first degree murder, when the crime was committed prior to the offender's 16th birthday must be sentenced to a minimum term of imprisonment of 25 years. If the offender committed the crime at age 16 or 17, the court must sentence the offender to a maximum term of life imprisonment and a minimum term of total confinement of no less than 25 years. The court may, in its discretion, sentence individuals convicted of aggravated first-degree murder who are age 16 or 17 to life without parole. 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*.

Review of Youthful Offender's Sentence. A person convicted of one or more crimes committed prior to the person's 18th birthday may petition the Indeterminate Sentence Review Board (ISRB) for early release after serving no less than 20 years of total confinement provided the person has not been convicted for any crime committed after the person's 18th birthday, the person has not committed a major violation in the 12 months prior to filing the petition, and the current sentence was not imposed under the aggravated first degree murder statute.

During the minimum term of total confinement, the person is not eligible for community custody, earned release time, furlough, home detention, partial confinement, work crew, work release, any other form of early release, or any other form of authorized leave of absence while not in the direct custody of a corrections officer. The Department of Corrections (DOC) must assess a youthful offender five years prior to release and provide programming to prepare the person for release.

No later than 180 days prior to the expiration of the person's minimum sentence, DOC must conduct an examination of the offender to assist in predicting the dangerousness and likelihood that the offender will engage in future criminal behavior if released. The ISRB must order that the person be released unless it is determined by a preponderance of the evidence that, despite conditions, the person will commit new criminal law violations if released. During the review, ISRB must provide the opportunity for victims and survivors of victims to present statements. If the ISRB denies release, a new minimum term, not to exceed five years, must be set before another review may take place.

If a person is released after serving the minimum term of confinement, the person must be subject to community custody under the supervision of DOC and the authority of ISRB for a period of time as determined by ISRB.

Summary of Bill: An offender convicted of aggravated first degree murder where the murder was committed prior to the offender's 25th birthday must be sentenced to a maximum term of life imprisonment and a minimum term of total confinement of 25 years. While serving such minimum term of total confinement the offender is not eligible for community custody, earned release time, furlough, home detention, partial confinement, work crew, work release, or any other form of authorized leave of absence while not in the direct custody of a corrections officer. Such an offender may be released if granted extraordinary release for reason of serious health problems, senility, advanced age, extraordinary meritorious acts or other extraordinary circumstances, or for an extraordinary medical placement.

A person convicted of one or more crimes committed prior to the person's 25th birthday may petition ISRB for early release after serving no less than 15 years of total confinement provided the person has not been convicted for any crime committed after the person's 25th birthday, the person has not committed a major violation in the 12 months prior to filing the petition, and the current sentence was not imposed under the aggravated first degree murder statute.

This act applies retroactively. For any person sentenced for aggravated first degree murder, prior to the effective date of this act, to a term of life without the possibility of parole for an offense committed on or after the offender's 16th birthday, but prior to the offender's 25th birthday, the case must be returned to the sentencing court for resentencing. The court must provide an opportunity for victims and survivors of victims to present a statement. Such

resentencing does not reopen the defendant's conviction to challenges that would otherwise be barred by statute or other procedural barriers.

Appropriation: None.

Fiscal Note: Requested on February 10, 2023.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill looks at increasing the age for sentence review consideration from 18 to 25. It aligns the statute with the science of adolescent brain development. If ISRB determines someone is not ready for release, they will not be released. Black people make up 4.3 percent of the state's population, but 32 percent of those who are currently incarcerated who may be affected by this law. Young men of color are the primary drivers of long-term sentences. There are people in our prisons serving long sentences who show incredible brilliance and should be in our communities. Washington has been a leader in the proliferation of mass incarceration. Washington has one of the highest rates of people serving life in prison in the nation. Long sentences for young people are not an effective deterrent. They exacerbate harm in communities by isolating young adults from their families and support systems and providing little rehabilitation.

CON: The Legislature should allocate sufficient funds to implement rehabilitation programming for individuals incarcerated in Washington State and to support recruitment, training, mental health professionals, substance use disorder counselors, and evidence-based programs, treatment, and services, along with education and job training for incarcerated individuals. Washington moved away from a parole system in the 1970s and 80s because of a documented racial disparity. This bill would move Washington back to a parole like system. This bill says that someone who commits murder in the first degree would be treated like someone who would commit rape in the second or manslaughter or assault in the first. This blurs those lines.

Persons Testifying: PRO: Senator Noel Frame, Prime Sponsor; Cecilia Conley; Jeffrey Ellis, Redemption Project of WA; Antoine Davis; Anthony Powers; Dr. Chelsea Moore, ACLU of Washington; Gail Brashear; Kristina Jorgensen, Collective Justice; Percy Levy, Washington Defender Association.

CON: Brian Smith, Port Angeles Police Department; Washington Association of Sheriffs and Police Chiefs; Russell Brown, WA Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: PRO: Devon Adams, Collective Justice.