

SUBSTITUTE HOUSE BILL 1396

State of Washington

68th Legislature

2024 Regular Session

By House Community Safety, Justice, & Reentry (originally sponsored by Representatives Goodman and Bateman)

READ FIRST TIME 01/31/24.

1 AN ACT Relating to persons sentenced for aggravated first degree
2 murder committed prior to reaching 21 years of age; amending RCW
3 9.94A.510, 9.94A.540, 9.94A.6332, and 9.94A.729; reenacting and
4 amending RCW 10.95.030; adding new sections to chapter 10.95 RCW;
5 providing an effective date; and declaring an emergency.

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

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

9 TABLE 1
10 Sentencing Grid

SERIOUSNESS		OFFENDER SCORE									
LEVEL		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, a term of twenty-five years to life)) Sentence established by RCW 10.95.030.									
	XV	23y4m	24y4m	25y4m	26y4m	27y4m	28y4m	30y4m	32y10m	36y	40y

1		240-	250-	261-	271-	281-	291-	312-	338-	370-	411-
2		320	333	347	361	374	388	416	450	493	548
3	XIV	14y4m	15y4m	16y2m	17y	17y11m	18y9m	20y5m	22y2m	25y7m	29y
4		123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
5		220	234	244	254	265	275	295	316	357	397
6	XIII	12y	13y	14y	15y	16y	17y	19y	21y	25y	29y
7		123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
8		164	178	192	205	219	233	260	288	342	397
9	XII	9y	9y11m	10y9m	11y8m	12y6m	13y5m	15y9m	17y3m	20y3m	23y3m
10		93-	102-	111-	120-	129-	138-	162-	178-	209-	240-
11		123	136	147	160	171	184	216	236	277	318
12	XI	7y6m	8y4m	9y2m	9y11m	10y9m	11y7m	14y2m	15y5m	17y11m	20y5m
13		78-	86-	95-	102-	111-	120-	146-	159-	185-	210-
14		102	114	125	136	147	158	194	211	245	280
15	X	5y	5y6m	6y	6y6m	7y	7y6m	9y6m	10y6m	12y6m	14y6m
16		51-	57-	62-	67-	72-	77-	98-	108-	129-	149-
17		68	75	82	89	96	102	130	144	171	198
18	IX	3y	3y6m	4y	4y6m	5y	5y6m	7y6m	8y6m	10y6m	12y6m
19		31-	36-	41-	46-	51-	57-	77-	87-	108-	129-
20		41	48	54	61	68	75	102	116	144	171
21	VIII	2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m
22		21-	26-	31-	36-	41-	46-	67-	77-	87-	108-
23		27	34	41	48	54	61	89	102	116	144
24	VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m
25		15-	21-	26-	31-	36-	41-	57-	67-	77-	87-
26		20	27	34	41	48	54	75	89	102	116
27	VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m
28		12+-	15-	21-	26-	31-	36-	46-	57-	67-	77-
29		14	20	27	34	41	48	61	75	89	102
30	V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
31		6-	12+-	13-	15-	22-	33-	41-	51-	62-	72-
32		12	14	17	20	29	43	54	68	82	96

1	IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
2		3-	6-	12+-	13-	15-	22-	33-	43-	53-	63-
3		9	12	14	17	20	29	43	57	70	84
4	III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
5		1-	3-	4-	9-	12+-	17-	22-	33-	43-	51-
6		3	8	12	12	16	22	29	43	57	68
7	II		4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m
8		0-90	2-	3-	4-	12+-	14-	17-	22-	33-	43-
9		Days	6	9	12	14	18	22	29	43	57
10	I			3m	4m	5m	8m	13m	16m	20m	2y2m
11		0-60	0-90	2-	2-	3-	4-	12+-	14-	17-	22-
12		Days	Days	5	6	8	12	14	18	22	29

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

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

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

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

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

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

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

1 (e) An offender convicted of the crime of aggravated first degree
2 murder for a murder that was committed prior to the offender's
3 ((eighteenth)) 21st birthday shall be sentenced to a term of total
4 confinement ((not less than twenty-five years)) that is consistent
5 with RCW 10.95.030.

6 (2) During such minimum terms of total confinement, no offender
7 subject to the provisions of this section is eligible for community
8 custody, earned release time, furlough, home detention, partial
9 confinement, work crew, work release, or any other form of early
10 release authorized under RCW 9.94A.728, or any other form of
11 authorized leave of absence from the correctional facility while not
12 in the direct custody of a corrections officer. The provisions of
13 this subsection shall not apply: (a) In the case of an offender in
14 need of emergency medical treatment; (b) for the purpose of
15 commitment to an inpatient treatment facility in the case of an
16 offender convicted of the crime of rape in the first degree; or (c)
17 for an extraordinary medical placement when authorized under RCW
18 9.94A.728((+3)) (1)(c).

19 (3)(a) Subsection (1)(a) through (d) of this section shall not be
20 applied in sentencing of juveniles tried as adults pursuant to RCW
21 13.04.030(1)(e)(i).

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

24 **Sec. 3.** RCW 9.94A.6332 and 2021 c 242 s 5 are each amended to
25 read as follows:

26 The procedure for imposing sanctions for violations of sentence
27 conditions or requirements is as follows:

28 (1) If the offender was sentenced under the drug offender
29 sentencing alternative, any sanctions shall be imposed by the
30 department or the court pursuant to RCW 9.94A.660.

31 (2) If the offender was sentenced under the special sex offender
32 sentencing alternative, any sanctions shall be imposed by the
33 department or the court pursuant to RCW 9.94A.670.

34 (3) If the offender was sentenced under the parenting sentencing
35 alternative, any sanctions shall be imposed by the department or by
36 the court pursuant to RCW 9.94A.655.

37 (4) If the offender was sentenced under the mental health
38 sentencing alternative, any sanctions shall be imposed by the
39 department or the court pursuant to RCW 9.94A.695.

1 (5) If a sex offender was sentenced pursuant to RCW 9.94A.507,
2 any sanctions shall be imposed by the board pursuant to RCW 9.95.435.

3 (6) If the offender was released pursuant to RCW 9.94A.730, any
4 sanctions shall be imposed by the board pursuant to RCW 9.95.435.

5 (7) If the offender was sentenced pursuant to RCW
6 10.95.030(~~(+3)~~) (2), section 6 of this act, or 10.95.035, any
7 sanctions shall be imposed by the board pursuant to RCW 9.95.435.

8 (8) In any other case, if the offender is being supervised by the
9 department, any sanctions shall be imposed by the department pursuant
10 to RCW 9.94A.737. If a probationer is being supervised by the
11 department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, upon
12 receipt of a violation hearing report from the department, the court
13 retains any authority that those statutes provide to respond to a
14 probationer's violation of conditions.

15 (9) If the offender is not being supervised by the department,
16 any sanctions shall be imposed by the court pursuant to RCW
17 9.94A.6333.

18 **Sec. 4.** RCW 9.94A.729 and 2022 c 29 s 1 are each amended to read
19 as follows:

20 (1)(a) The term of the sentence of an offender committed to a
21 correctional facility operated by the department may be reduced by
22 earned release time in accordance with procedures that shall be
23 developed and adopted by the correctional agency having jurisdiction
24 in which the offender is confined. The earned release time shall be
25 for good behavior and good performance, as determined by the
26 correctional agency having jurisdiction. The correctional agency
27 shall not credit the offender with earned release credits in advance
28 of the offender actually earning the credits.

29 (b) Any program established pursuant to this section shall allow
30 an offender to earn early release credits for presentence
31 incarceration. If an offender is transferred from a county jail to
32 the department, the administrator of a county jail facility shall
33 certify to the department the amount of time spent in custody at the
34 facility and the number of days of early release credits lost or not
35 earned. The department may approve a jail certification from a
36 correctional agency that calculates early release time based on the
37 actual amount of confinement time served by the offender before
38 sentencing when an erroneous calculation of confinement time served
39 by the offender before sentencing appears on the judgment and

1 sentence. The department must adjust an offender's rate of early
2 release listed on the jail certification to be consistent with the
3 rate applicable to offenders in the department's facilities. However,
4 the department is not authorized to adjust the number of presentence
5 early release days that the jail has certified as lost or not earned.

6 (2) (a) An offender who has been convicted of a felony committed
7 after July 23, 1995, that involves any applicable deadly weapon
8 enhancements under RCW 9.94A.533 (3) or (4), or both, shall not
9 receive any good time credits or earned release time for that portion
10 of his or her sentence that results from any deadly weapon
11 enhancements.

12 (b) An offender whose sentence includes any impaired driving
13 enhancements under RCW 9.94A.533(7), minor child enhancements under
14 RCW 9.94A.533(13), or both, shall not receive any good time credits
15 or earned release time for any portion of his or her sentence that
16 results from those enhancements.

17 (3) An offender may earn early release time as follows:

18 (a) In the case of an offender sentenced pursuant to RCW
19 10.95.030(~~((+3))~~) (2), section 6 of this act, or 10.95.035, the
20 offender may not receive any earned early release time during the
21 minimum term of confinement imposed by the court; for any remaining
22 portion of the sentence served by the offender, the aggregate earned
23 release time may not exceed 10 percent of the sentence.

24 (b) In the case of an offender convicted of a serious violent
25 offense, or a sex offense that is a class A felony, committed on or
26 after July 1, 1990, and before July 1, 2003, the aggregate earned
27 release time may not exceed 15 percent of the sentence.

28 (c) In the case of an offender convicted of a serious violent
29 offense, or a sex offense that is a class A felony, committed on or
30 after July 1, 2003, the aggregate earned release time may not exceed
31 10 percent of the sentence.

32 (d) An offender is qualified to earn up to 50 percent of
33 aggregate earned release time if he or she:

34 (i) Is not classified as an offender who is at a high risk to
35 reoffend as provided in subsection (4) of this section;

36 (ii) Is not confined pursuant to a sentence for:

37 (A) A sex offense;

38 (B) A violent offense;

39 (C) A crime against persons as defined in RCW 9.94A.411;

1 (D) A felony that is domestic violence as defined in RCW
2 10.99.020;

3 (E) A violation of RCW 9A.52.025 (residential burglary);

4 (F) A violation of, or an attempt, solicitation, or conspiracy to
5 violate, RCW 69.50.401 by manufacture or delivery or possession with
6 intent to deliver methamphetamine; or

7 (G) A violation of, or an attempt, solicitation, or conspiracy to
8 violate, RCW 69.50.406 (delivery of a controlled substance to a
9 minor);

10 (iii) Has no prior conviction for the offenses listed in (d)(ii)
11 of this subsection;

12 (iv) Participates in programming or activities as directed by the
13 offender's individual reentry plan as provided under RCW 72.09.270 to
14 the extent that such programming or activities are made available by
15 the department; and

16 (v) Has not committed a new felony after July 22, 2007, while
17 under community custody.

18 (e) In no other case shall the aggregate earned release time
19 exceed one-third of the total sentence.

20 (4) The department shall perform a risk assessment of each
21 offender who may qualify for earned early release under subsection
22 (3)(d) of this section utilizing the risk assessment tool recommended
23 by the Washington state institute for public policy. Subsection
24 (3)(d) of this section does not apply to offenders convicted after
25 July 1, 2010.

26 (5)(a) A person who is eligible for earned early release as
27 provided in this section and who will be supervised by the department
28 pursuant to RCW 9.94A.501 or 9.94A.5011, shall be transferred to
29 community custody in lieu of earned release time;

30 (b) The department shall, as a part of its program for release to
31 the community in lieu of earned release, require the offender to
32 propose a release plan that includes an approved residence and living
33 arrangement. All offenders with community custody terms eligible for
34 release to community custody in lieu of earned release shall provide
35 an approved residence and living arrangement prior to release to the
36 community;

37 (c) The department may deny transfer to community custody in lieu
38 of earned release time if the department determines an offender's
39 release plan, including proposed residence location and living
40 arrangements, may violate the conditions of the sentence or

1 conditions of supervision, place the offender at risk to violate the
2 conditions of the sentence, place the offender at risk to reoffend,
3 or present a risk to victim safety or community safety. The
4 department's authority under this section is independent of any
5 court-ordered condition of sentence or statutory provision regarding
6 conditions for community custody;

7 (d) If the department is unable to approve the offender's release
8 plan, the department may do one or more of the following:

9 (i) Transfer an offender to partial confinement in lieu of earned
10 early release for a period not to exceed three months. The three
11 months in partial confinement is in addition to that portion of the
12 offender's term of confinement that may be served in partial
13 confinement as provided in RCW 9.94A.728(1)(e);

14 (ii) Provide rental vouchers to the offender for a period not to
15 exceed six months if rental assistance will result in an approved
16 release plan.

17 A voucher must be provided in conjunction with additional
18 transition support programming or services that enable an offender to
19 participate in services including, but not limited to, substance
20 abuse treatment, mental health treatment, sex offender treatment,
21 educational programming, or employment programming;

22 (e) The department shall maintain a list of housing providers
23 that meets the requirements of RCW 72.09.285. If more than two
24 voucher recipients will be residing per dwelling unit, as defined in
25 RCW 59.18.030, rental vouchers for those recipients may only be paid
26 to a housing provider on the department's list;

27 (f) For each offender who is the recipient of a rental voucher,
28 the department shall gather data as recommended by the Washington
29 state institute for public policy in order to best demonstrate
30 whether rental vouchers are effective in reducing recidivism.

31 (6) An offender serving a term of confinement imposed under RCW
32 9.94A.670(5)(a) is not eligible for earned release credits under this
33 section.

34 **Sec. 5.** RCW 10.95.030 and 2023 c 102 s 23 and 2023 c 102 s 20
35 are each reenacted and amended to read as follows:

36 (1) Except as provided in subsection (2) of this section, any
37 person convicted of the crime of aggravated first degree murder shall
38 be sentenced to life imprisonment without possibility of release or
39 parole. A person sentenced to life imprisonment under this section

1 shall not have that sentence suspended, deferred, or commuted by any
2 judicial officer and the indeterminate sentence review board or its
3 successor may not parole such prisoner nor reduce the period of
4 confinement in any manner whatsoever including but not limited to any
5 sort of good-time calculation. The department of social and health
6 services or its successor or any executive official may not permit
7 such prisoner to participate in any sort of release or furlough
8 program.

9 (2) (a) (i) Any person convicted of the crime of aggravated first
10 degree murder for an offense committed prior to the person's
11 (~~sixteenth~~) 16th birthday shall be sentenced to a maximum term of
12 life imprisonment and a minimum term of total confinement of
13 (~~twenty-five~~) 25 years.

14 (ii) Any person convicted of the crime of aggravated first degree
15 murder for an offense committed when the person is at least
16 (~~sixteen~~) 16 years old but less than (~~eighteen~~) 18 years old
17 shall be sentenced to a maximum term of life imprisonment and a
18 minimum term of total confinement of no less than (~~twenty-five~~) 25
19 years.

20 (iii) Any person convicted of the crime of aggravated first
21 degree murder for an offense committed when the person is at least 18
22 years old but less than 21 years old shall be sentenced to a maximum
23 term of life imprisonment and a minimum term of total confinement of
24 no less than 25 years if the court determines that the mitigating
25 factors that account for the diminished culpability of youth, as
26 described in (b) of this subsection, apply to the current offense. If
27 the court determines that such mitigating factors do not apply, the
28 person shall be sentenced to life imprisonment without possibility of
29 release or parole.

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

37 (c) A person sentenced under this subsection shall serve the
38 sentence in a facility or institution operated, or utilized under
39 contract, by the state. During the minimum term of total confinement,
40 the person shall not be eligible for community custody, earned

1 release time, furlough, home detention, partial confinement, work
2 crew, work release, or any other form of early release authorized
3 under RCW 9.94A.728, or any other form of authorized leave or absence
4 from the correctional facility while not in the direct custody of a
5 corrections officer. The provisions of this subsection shall not
6 apply: (i) In the case of an offender in need of emergency medical
7 treatment; or (ii) for an extraordinary medical placement when
8 authorized under RCW 9.94A.728(1)(c).

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

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

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

1 (g) In a hearing conducted under (f) of this subsection, the
2 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 (h) An offender released by the board is subject to the
11 supervision of the department of corrections for a period of time to
12 be determined by the board. The department shall monitor the
13 offender's compliance with conditions of community custody imposed by
14 the court or board and promptly report any violations to the board.
15 Any violation of conditions of community custody established or
16 modified by the board are subject to the provisions of RCW 9.95.425
17 through 9.95.440.

18 (i) An offender released or discharged under this section may be
19 returned to the institution at the discretion of the board if the
20 offender is found to have violated a condition of community custody.
21 The offender is entitled to a hearing pursuant to RCW 9.95.435. The
22 board shall set a new minimum term of incarceration not to exceed
23 five years.

24 NEW SECTION. **Sec. 6.** A new section is added to chapter 10.95
25 RCW to read as follows:

26 (1) A person, who was sentenced prior to May 1, 2024, under this
27 chapter or any prior law, to a term of life without the possibility
28 of parole for an offense committed when the person is at least 18
29 years old but less than 21 years old, shall be returned to the
30 sentencing court or the sentencing court's successor for sentencing
31 consistent with RCW 10.95.030. Release and supervision of a person
32 who receives a minimum term of less than life will be governed by RCW
33 10.95.030.

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

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

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

4 NEW SECTION. **Sec. 7.** A new section is added to chapter 10.95
5 RCW to read as follows:

6 Sections 1 through 6 of this act apply to all sentencing hearings
7 conducted on or after May 1, 2024, regardless of the date of an
8 offender's underlying offense.

9 NEW SECTION. **Sec. 8.** If any provision of this act or its
10 application to any person or circumstance is held invalid, the
11 remainder of the act or the application of the provision to other
12 persons or circumstances is not affected.

13 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
14 preservation of the public peace, health, or safety, or support of
15 the state government and its existing public institutions, and takes
16 effect May 1, 2024.

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