

SENATE BILL 5451

State of Washington

68th Legislature

2023 Regular Session

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

Read first time 01/18/23. Referred to Committee on Law & Justice.

1 AN ACT Relating to allowing qualifying persons serving long
2 sentences committed prior to reaching 25 years of age to seek review
3 for possible release from incarceration; amending RCW 9.94A.510,
4 9.94A.540, 9.94A.570, 9.94A.730, and 10.95.030; reenacting and
5 amending RCW 9.94A.728; adding a new section to chapter 10.95 RCW;
6 and creating new sections.

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

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

10 TABLE 1
11 Sentencing Grid

Table with columns: SERIOUSNESS, LEVEL, OFFENDER SCORE (0-8, 9 or more). Row 1: 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.

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~~) 20 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~~) 60 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~~) 25th birthday shall be sentenced to a term of total
4 confinement not less than (~~twenty-five~~) 25 years.

5 (2) During such minimum terms of total confinement, no offender
6 subject to the provisions of this section is eligible for community
7 custody, earned release time, furlough, home detention, partial
8 confinement, work crew, work release, or any other form of early
9 release authorized under RCW 9.94A.728, or any other form of
10 authorized leave of absence from the correctional facility while not
11 in the direct custody of a corrections officer. The provisions of
12 this subsection shall not apply: (a) In the case of an offender in
13 need of emergency medical treatment; (b) for the purpose of
14 commitment to an inpatient treatment facility in the case of an
15 offender convicted of the crime of rape in the first degree; (~~or~~)
16 (c) for an extraordinary medical placement when authorized under RCW
17 9.94A.728(~~(+3)~~) (1) (c); or (d) for release approved by the board
18 under RCW 9.94A.730.

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.570 and 2000 c 28 s 6 are each amended to read
25 as follows:

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

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

1 purpose of commitment to an inpatient treatment facility in the case
2 of an offender convicted of the crime of rape in the first degree.

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

5 **Sec. 4.** RCW 9.94A.728 and 2021 c 311 s 19 and 2021 c 266 s 2 are
6 each reenacted and amended to read as follows:

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

11 (a) An offender may earn early release time as authorized by RCW
12 9.94A.729;

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

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

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

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

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

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

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

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

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

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

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

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

18 (ii) For eligible offenders under RCW 9.94A.733(1)(b), after
19 serving at least four months in total confinement in a state
20 correctional facility, an offender may serve no more than the final
21 18 months of the offender's term of confinement in partial
22 confinement as home detention as part of the graduated reentry
23 program developed by the department;

24 (g) The governor may pardon any offender;

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

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

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

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

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

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

12 **Sec. 5.** RCW 9.94A.730 and 2015 c 134 s 6 are each amended to
13 read as follows:

14 (1) Notwithstanding any other provision of this chapter, any
15 person convicted of one or more crimes committed prior to the
16 person's (~~eighteenth~~) 25th birthday may petition the indeterminate
17 sentence review board for early release after serving no less than
18 (~~twenty~~) 15 years of total confinement, provided the person has not
19 been convicted for any crime committed subsequent to the person's
20 (~~eighteenth~~) 25th birthday, the person has not committed a
21 disqualifying serious infraction as defined by the department in the
22 (~~twelve~~) 12 months prior to filing the petition for early release,
23 and the current sentence was not imposed under RCW 10.95.030 or
24 9.94A.507.

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

31 (3) No later than (~~one hundred eighty~~) 180 days from receipt of
32 the petition for early release, the department shall conduct, and the
33 offender shall participate in, an examination of the person,
34 incorporating methodologies that are recognized by experts in the
35 prediction of dangerousness, and including a prediction of the
36 probability that the person will engage in future criminal behavior
37 if released on conditions to be set by the board. The board may
38 consider a person's failure to participate in an evaluation under
39 this subsection in determining whether to release the person. The

1 board shall order the person released under such affirmative and
2 other conditions as the board determines appropriate, unless the
3 board determines by a preponderance of the evidence that, despite
4 such conditions, it is more likely than not that the person will
5 commit new criminal law violations if released. The board shall give
6 public safety considerations the highest priority when making all
7 discretionary decisions regarding the ability for release and
8 conditions of release.

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

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

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

29 (7) An offender released under the provisions of this section may
30 be returned to the institution at the discretion of the board if the
31 offender is found to have violated a condition of community custody.
32 The offender is entitled to a hearing pursuant to RCW 9.95.435. If
33 the board finds that the offender has committed a new violation, the
34 board may return the offender to the institution for up to the
35 remainder of the court-imposed term of incarceration. The offender
36 may file a new petition for release five years from the date of
37 return to the institution or at an earlier date as may be set by the
38 board.

1 **Sec. 6.** RCW 10.95.030 and 2015 c 134 s 5 are each amended to
2 read as follows:

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

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

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

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

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

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

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

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

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

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

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

37 (~~((d))~~) (c) Any person sentenced pursuant to this subsection
38 shall be subject to community custody under the supervision of the
39 department of corrections and the authority of the indeterminate
40 sentence review board. As part of any sentence under this subsection,

1 the court shall require the person to comply with any conditions
2 imposed by the board.

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

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

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

38 ~~((+h))~~ (g) An offender released by the board is subject to the
39 supervision of the department of corrections for a period of time to
40 be determined by the board. The department shall monitor the

1 offender's compliance with conditions of community custody imposed by
2 the court or board and promptly report any violations to the board.
3 Any violation of conditions of community custody established or
4 modified by the board are subject to the provisions of RCW 9.95.425
5 through 9.95.440.

6 ~~((i))~~ (h) An offender released or discharged under this section
7 may be returned to the institution at the discretion of the board if
8 the offender is found to have violated a condition of community
9 custody. The offender is entitled to a hearing pursuant to RCW
10 9.95.435. The board shall set a new minimum term of incarceration not
11 to exceed five years.

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

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

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

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

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

31 NEW SECTION. **Sec. 8.** This act applies retroactively to persons
32 incarcerated on the effective date of this section, regardless of the
33 date of the offense or conviction.

1 NEW SECTION. **Sec. 9.** This act does not create any right or
2 entitlement to release from incarceration before the end of a term of
3 incarceration imposed by the court.

--- **END** ---