
Public Safety Committee

HB 1338

Brief Description: Concerning juveniles sentenced to long terms of incarceration.

Sponsors: Representatives Roberts, Moscoso, Pettigrew, Pedersen, Clibborn, Wylie, Jinkins, Kagi, Hunt, Springer, Farrell, Appleton, McCoy, Walsh, Moeller, Santos and Freeman.

Brief Summary of Bill

- Provides for juveniles convicted to aggravated murder to be sentenced to an indeterminate sentence of between 20 and 35 years.
- Allows juveniles sentenced to a term of incarceration of 20 years or more to petition the sentencing court for early release after serving 20 years of confinement.

Hearing Date: 2/5/13

Staff: Sarah Koster (786-7303).

Background:

In Washington, the crime of Aggravated First Degree Murder is punishable by either a sentence of life imprisonment without the possibility of parole or, if sufficient mitigating factors are not present, the death penalty.

Eighth Amendment Sentencing Restrictions.

In 2012 in *Miller v. Alabama*, the United States Supreme Court (Supreme Court) held that the Eighth Amendment's prohibition on cruel and unusual punishment forbids a sentencing scheme that imposes a mandatory sentence of life in prison without the possibility of parole for juvenile homicide offenders, building on a 2010 decision, *Graham v. Florida*, which prohibited a sentence of life without parole for a juvenile non-homicide offender. The Supreme Court had also previously found, in a 2005 decision, *Roper v. Simmons*, that the Eighth Amendment forbids the imposition of a sentence of death for an offense committed as a juvenile.

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

In this set of cases, the Supreme Court determined that children are constitutionally different from adults for sentencing purposes because of their lack of maturity, underdeveloped sense of responsibility, vulnerability to negative influences, lack of control over their environments, and possibility for rehabilitation. The Supreme Court mandated that these differences between children and adults be considered in sentencing juveniles for homicide offenses.

Aggravated First Degree Murder.

A person is guilty of Aggravated First Degree Murder if he or she commits Murder in the first degree and one of the following factors was present:

1. at the time of the act resulting in the death, the person was serving a term of imprisonment, had escaped, or was on authorized or unauthorized leave in or from a state facility or program for the incarceration or treatment of persons adjudicated guilty of crimes;
2. at the time of the act resulting in death, the person was in custody in a county or county-city jail as a consequence of having been adjudicated guilty of a felony;
3. the person committed the murder pursuant to an agreement that he or she would receive money or any other thing of value for committing the murder;
4. the person solicited another person to commit the murder and had paid or had agreed to pay money or any other thing of value for committing the murder;
5. the person committed the murder to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group;
6. the murder was committed during the course of or as a result of a shooting where the discharge of the firearm is either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm, or both, to the scene of the discharge;
7. the victim was:
 - a. a judge; juror or former juror; prospective, current, or former witness in an adjudicative proceeding; prosecuting attorney; deputy prosecuting attorney; defense attorney; a member of the Indeterminate Sentence Review Board; or a probation or parole officer; and
 - b. the murder was related to the exercise of official duties performed or to be performed by the victim;
8. the person committed the murder to conceal the commission of a crime or to protect or conceal the identity of any person committing a crime, including, but specifically not limited to, any attempt to avoid prosecution as a persistent offender;
9. there was more than one victim and the murders were part of a common scheme or plan or the result of a single act of the person;
10. the murder was committed in the course of, in furtherance of, or in immediate flight from one of the following crimes:
 - a. Robbery in the first or second degree;
 - b. Rape in the first or second degree;
 - c. Burglary in the first or second degree or Residential Burglary;
 - d. Kidnapping in the first degree; or
 - e. Arson in the first degree;

11. the victim was regularly employed or self-employed as a reporter and the murder was committed to obstruct or hinder the investigative, research, or reporting activities of the victim;
12. at the time the person committed the murder, there existed a court order, issued in this or any other state, which prohibited the person from either contacting the victim, molesting the victim, or disturbing the peace of the victim, and the person had knowledge of the existence of that order; and
13. at the time the person committed the murder, the person and the victim were "family or household members" and the person had previously engaged in a pattern or practice of three or more of the following crimes committed upon the victim within a five-year period, regardless of whether a conviction resulted in:
 - a. Harassment; or
 - b. any criminal Assault.

Summary of Bill:

Juveniles Sentenced for Aggravated First Degree Murder.

A person convicted of Aggravated Murder in the first degree for an offense committed prior to the person's 18th birthday will be sentenced to an indeterminate sentence with a minimum term of between 20 and 25 years and a maximum term of no more than 35 years.

In determining the maximum and minimum terms, the court must consider the following factors:

1. the offender's age at the time of offense;
2. the offender's level of participation in the offense;
3. the offender's intellectual capacity;
4. the offender's ability to appreciate the risks and consequences of his or her conduct;
5. the degree of familial or peer pressure exerted upon the offender in the commission of the offense;
6. the offender's familial and community environment;
7. the offender's educational history;
8. any history of trauma in the offender's life;
9. the offender's faith and community involvement;
10. the offender's involvement in the child welfare system;
11. the offender's potential for rehabilitation;
12. the outcomes of a professional mental health examination of the offender; and
13. any other mitigating factors.

Approximately six months before the expiration of the minimum sentence, the sentencing court must conduct a hearing to determine whether the person should be released before expiration of the maximum term. Both the offender and victim's families will have the opportunity to participate in the hearing. The offender is entitled to counsel at the hearing.

The court must order the offender released except if it determines, by a preponderance of the evidence, that, despite any conditions which may be imposed, it is more likely than not that the person will commit new violent crimes if released. If the offender is released, the court will determine a term of community custody, during which time the offender will be under the supervision of the Department of Corrections.

The court must consider the following factors in making its determination:

1. the extent to which issues concerning juvenile brain development contributed to the offense;
2. the offender's age at the time of offense;
3. the offender's intellectual capacity;
4. the offender's level of participation in the offense;
5. the offender's efforts towards rehabilitation, including participation in and completion of education and employment programs while in prison;
6. whether the offender's character deficiencies have been reformed; and
7. any other mitigating evidence.

Juveniles Who Were Previously Given a Life Sentence for Aggravated First Degree Murder.

A person who was previously sentenced to life without the possibility of parole for an offense committed prior to his or her 18th birthday will be returned to the sentencing court to be resentenced to an indeterminate sentence with a minimum term of between 20 and 25 years and a maximum term of no more than 35 years. The sentencing court must consider the same mitigating factors described above, with regard to a sentencing hearing. There will be an opportunity for victims to present a statement.

Juvenile Who Received a Sentence of at Least 20 Years for Offenses Other than Aggravated First Degree Murder.

If an offender is given a sentence of 20 years or more for offenses committed prior to his or her 18th birthday, he or she is eligible for review by the sentencing court no later than 180 days before the 20 years has expired, except if he or she has committed a major violation in the preceding 12 months or been convicted of any crime committed subsequent to his or her 18th birthday.

The court shall order the person released, under such circumstances as the court determines appropriate, unless it determines, by a preponderance of the evidence, that the person will commit new violent criminal law violations if released. In making its determination, the court must consider the same factors, described above, as are to be considered in releasing a person convicted of Aggravated First Degree Murder. If the offender is released, the court will determine a term of community custody, which is not to exceed the maximum term of the sentence.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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