
Public Safety Committee

2SSB 5064

Brief Description: Concerning persons sentenced for offenses committed prior to reaching eighteen years of age.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove and Kline).

Brief Summary of Second Substitute Bill

- Creates a new sentencing scheme for offenders convicted of aggravated first degree murder under the age of 18: (1) if under 16 years at the date of offense, the offender will receive an indeterminate sentence with a minimum of 25 years and a maximum term of life; and (2) if 16 or 17 years old at the time of offense, the offender will receive an indeterminate sentence with a minimum of 25 years or more and a maximum term of life.
- Provides for resentencing of offenders previously sentenced to a term of life for an offense committed under the age of 18.
- Allows a person convicted of an offense committed prior to his or her eighteenth birthday to petition the Indeterminate Sentence Review Board for early release after serving 20 years.

Hearing Date: 2/19/14

Staff: Sarah Koster (786-7303).

Background:

In June 2012 the United States Supreme Court (Court) held, in *Miller v. Alabama*, (10-9646), that the 8th 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 a part of the legislation nor does it constitute a statement of legislative intent.

The Court held when a youth is convicted of murder that occurred before age 18, the sentencing judge must focus directly on the youth and assess the specific age of the individual, the youth's childhood, and life experience; weigh the degree of responsibility the youth was capable of exercising; and assess that youth's chances of becoming rehabilitated. The judge can only impose a sentence of life without parole if the judge concludes the sentence proportionally punishes the youth, given all of the factors that mitigate the youth's guilt. The Court reasoned that while it was not foreclosing the judge's ability to sentence a youth to life without parole, appropriate occasions for sentencing juveniles to this harshest penalty will be uncommon.

Under Washington law, Aggravated Murder in the first degree occurs when a person commits first degree murder and one or more aggravating circumstances are present such as the victim was a law enforcement officer, firefighter, or other person engaged in official duties; the murder was committed in the course of a robbery, rape, burglary, kidnapping, or arson; or the murder was committed to maintain the person's membership or advancement in a gang. The crime of Aggravated Murder in the first degree 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 may be imposed. Murder in the first degree, without aggravating factors, is punishable with a term of confinement between 23 and 40 years.

Currently there are 27 individuals serving life sentences in Washington for murders committed prior to their eighteenth birthday.

Summary of Bill:

Minors Convicted of Aggravated Murder in the First Degree.

A person convicted of Aggravated Murder in the first degree for an offense committed prior to his or her eighteenth birthday will be sentenced to an indeterminate term:

1. If the offender was under 16 years of age when the offense was committed, he or she will be sentenced to a minimum term of 25 years and a maximum term of life.
2. If the offender was 16 or 17 years old when the offense was committed, he or she will be sentenced to a minimum term of 25 years or more and a maximum term of life.

In setting the minimum term for 16- or 17-year-old offenders, the Court must take into account the mitigating factors that account for the diminished culpability of youth, as enumerated by the Court in *Miller v. Alabama*.

Five years before the expiration of the offender's minimum term, the Department of Corrections (DOC) is required to conduct an assessment of the offender and identify appropriate programming to prepare the offender for return to the community. The programming will be made available to the extent possible.

Six months before the expiration of the offender's minimum term, the DOC will conduct an examination of the offender, including a prediction of the probability that the person will engage in future criminal behavior.

The Indeterminate Sentence Review Board (ISRB) will release the person, with conditions imposed as appropriate, unless it determines, by a preponderance of the evidence, that, despite any conditions, it is more likely than not that the person will commit new criminal law violations

if released. The ISRB must give public safety the highest priority in making decisions. There must be an opportunity for victims to present statements to the ISRB.

If a person is not released, the ISRB will set a new minimum term of up to five additional years. If a person is released, he or she will be subject to the supervision of the DOC on community custody for the rest of his or her life.

Retroactivity/Resentencing.

Persons who were sentenced to life without the possibility of parole for a crime committed before their eighteenth birthday before the effective date of this bill will be returned to the sentencing court for a new sentence. The new sentence will follow the same terms as new sentences for Aggravated Murder in the first degree for an offense committed before the offender's eighteenth birthday. If a person is resentenced under this bill, no motion for collateral attack on the judgment and sentence may be filed.

A person sentenced or resentenced under this bill may not earn earned release time over 10 percent of the sentence.

Minors Given Long Sentences for Offenses Other Than Aggravated Murder in the First Degree.

A person convicted of one or more crimes, except Aggravated Murder in the first degree or a determinate plus sex offense, committed before his or her eighteenth birthday may petition the ISRB for release after serving 20 years of total confinement, provided he or she has not been convicted of any offense committed after his or her eighteenth birthday and he or she has not committed a major violation in the 12 months prior to filing the petition.

After an eligible offender has served 15 years in total confinement, the DOC is required to conduct an assessment of the offender and identify appropriate programming to prepare the offender for return to the community. The programming will be made available to the extent possible.

Within six months of receiving the petition, the DOC will conduct an examination of the offender, including a prediction of the probability that the person will engage in future criminal behavior.

The ISRB will release the person, with conditions imposed as appropriate, unless it determines, by a preponderance of the evidence, that, despite any conditions, it is more likely than not that the person will commit new criminal law violations if released. The ISRB must give public safety the highest priority in making decisions. There must be an opportunity for victims to present statements to the ISRB.

If a person is not released, he or she may file a new petition five years from the date of denial, or earlier if allowed by the ISRB. If an offender is released, he or she will be subject to the supervision of the DOC on community custody until the expiration of the court imposed term of incarceration.

Appropriation: None.

Fiscal Note: Requested on February 14, 2014.

Effective Date: The bill contains an emergency clause and takes effect on June 1, 2014.