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**SECOND SUBSTITUTE HOUSE BILL 1338**

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**State of Washington**

**63rd Legislature**

**2013 Regular Session**

**By** House Appropriations Subcommittee on General Government (originally sponsored by Representatives Roberts, Moscoso, Pettigrew, Pedersen, Clibborn, Wylie, Jenkins, Kagi, Hunt, Springer, Farrell, Appleton, McCoy, Walsh, Moeller, Santos, and Freeman)

READ FIRST TIME 03/01/13.

1       AN ACT Relating to juveniles sentenced to long terms of  
2 incarceration; amending RCW 9.94A.540, 9.94A.6332, 9.94A.729, 9.95.425,  
3 9.95.430, 9.95.435, 9.95.440, and 10.95.030; adding a new section to  
4 chapter 9.94A RCW; adding a new section to chapter 10.95 RCW;  
5 prescribing penalties; providing an effective date; and declaring an  
6 emergency.

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

8       **Sec. 1.** RCW 9.94A.540 and 2005 c 437 s 2 are each amended to read  
9 as follows:

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

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

16       (b) An offender convicted of the crime of assault in the first  
17 degree or assault of a child in the first degree where the offender  
18 used force or means likely to result in death or intended to kill the

1 victim shall be sentenced to a term of total confinement not less than  
2 five years.

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

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

9 (e) An offender convicted of aggravated first degree murder for a  
10 murder that was committed prior to the offender's eighteenth birthday  
11 shall be sentenced as set forth in RCW 10.95.030(3).

12 (2) During such minimum terms of total confinement, no offender  
13 subject to the provisions of this section is eligible for community  
14 custody, earned release time, furlough, home detention, partial  
15 confinement, work crew, work release, or any other form of early  
16 release authorized under RCW 9.94A.728, or any other form of authorized  
17 leave of absence from the correctional facility while not in the direct  
18 custody of a corrections officer. The provisions of this subsection  
19 shall not apply: (a) In the case of an offender in need of emergency  
20 medical treatment; (b) for the purpose of commitment to an inpatient  
21 treatment facility in the case of an offender convicted of the crime of  
22 rape in the first degree; or (c) for an extraordinary medical placement  
23 when authorized under RCW 9.94A.728(~~(+4)~~) (3).

24 (3)(a) Subsection (1)(a) through (d) of this section shall not be  
25 applied in sentencing of juveniles tried as adults pursuant to RCW  
26 13.04.030(1)(e)(i).

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

29 **Sec. 2.** RCW 9.94A.6332 and 2010 c 224 s 11 are each amended to  
30 read as follows:

31 The procedure for imposing sanctions for violations of sentence  
32 conditions or requirements is as follows:

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

36 (2) If the offender was sentenced under the special sex offender

1 sentencing alternative, any sanctions shall be imposed by the  
2 department or the court pursuant to RCW 9.94A.670.

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

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

8 (5) If the offender was released pursuant to section 9 of this act,  
9 any sanctions shall be imposed by the board pursuant to RCW 9.95.435.

10 (6) If the offender was sentenced pursuant to RCW 10.95.030(3), any  
11 sanctions shall be imposed by the board pursuant to RCW 9.95.435.

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

19 ~~((+6))~~ (8) If the offender is not being supervised by the  
20 department, any sanctions shall be imposed by the court pursuant to RCW  
21 9.94A.6333.

22 **Sec. 3.** RCW 9.94A.729 and 2011 1st sp.s. c 40 s 4 are each amended  
23 to read as follows:

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

33 (b) Any program established pursuant to this section shall allow an  
34 offender to earn early release credits for presentence incarceration.  
35 If an offender is transferred from a county jail to the department, the  
36 administrator of a county jail facility shall certify to the department  
37 the amount of time spent in custody at the facility and the amount of

1 earned release time. The department may approve a jail certification  
2 from a correctional agency that calculates earned release time based on  
3 the actual amount of confinement time served by the offender before  
4 sentencing when an erroneous calculation of confinement time served by  
5 the offender before sentencing appears on the judgment and sentence.

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

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

12 (a) In the case of an offender sentenced pursuant to RCW  
13 10.95.030(3) or section 9 of this act, the aggregate earned release  
14 time may not exceed fifteen percent of the sentence.

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

19 ~~((b))~~ (c) In the case of an offender convicted of a serious  
20 violent offense, or a sex offense that is a class A felony, committed  
21 on or after July 1, 2003, the aggregate earned release time may not  
22 exceed ten percent of the sentence.

23 ~~((e))~~ (d) An offender is qualified to earn up to fifty percent of  
24 aggregate earned release time if he or she:

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

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

28 (A) A sex offense;

29 (B) A violent offense;

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

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

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

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

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

1 (iii) Has no prior conviction for the offenses listed in ~~((e))~~  
2 (d)(ii) of this subsection;

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

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

9 ~~((d))~~ (e) In no other case shall the aggregate earned release  
10 time exceed one-third of the total sentence.

11 (4) The department shall perform a risk assessment of each offender  
12 who may qualify for earned early release under subsection (3)~~((e))~~  
13 (d) of this section utilizing the risk assessment tool recommended by  
14 the Washington state institute for public policy. Subsection  
15 (3)~~((e))~~ (d) of this section does not apply to offenders convicted  
16 after July 1, 2010.

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

21 (b) The department shall, as a part of its program for release to  
22 the community in lieu of earned release, require the offender to  
23 propose a release plan that includes an approved residence and living  
24 arrangement. All offenders with community custody terms eligible for  
25 release to community custody in lieu of earned release shall provide an  
26 approved residence and living arrangement prior to release to the  
27 community;

28 (c) The department may deny transfer to community custody in lieu  
29 of earned release time if the department determines an offender's  
30 release plan, including proposed residence location and living  
31 arrangements, may violate the conditions of the sentence or conditions  
32 of supervision, place the offender at risk to violate the conditions of  
33 the sentence, place the offender at risk to reoffend, or present a risk  
34 to victim safety or community safety. The department's authority under  
35 this section is independent of any court-ordered condition of sentence  
36 or statutory provision regarding conditions for community custody;

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

1 (i) Transfer an offender to partial confinement in lieu of earned  
2 early release for a period not to exceed three months. The three  
3 months in partial confinement is in addition to that portion of the  
4 offender's term of confinement that may be served in partial  
5 confinement as provided in RCW 9.94A.728(5);

6 (ii) Provide rental vouchers to the offender for a period not to  
7 exceed three months if rental assistance will result in an approved  
8 release plan. The voucher must be provided in conjunction with  
9 additional transition support programming or services that enable an  
10 offender to participate in services including, but not limited to,  
11 substance abuse treatment, mental health treatment, sex offender  
12 treatment, educational programming, or employment programming;

13 (e) For each offender who is the recipient of a rental voucher, the  
14 department shall include, concurrent with the data that the department  
15 otherwise obtains and records, the housing status of the offender for  
16 the duration of the offender's supervision.

17 (6) An offender serving a term of confinement imposed under RCW  
18 9.94A.670(5)(a) is not eligible for earned release credits under this  
19 section.

20 **Sec. 4.** RCW 9.95.425 and 2009 c 28 s 30 are each amended to read  
21 as follows:

22 (1) Whenever the board or a community corrections officer of this  
23 state has reason to believe an offender released under RCW 9.95.420,  
24 10.95.030(3), or section 9 of this act has violated a condition of  
25 community custody or the laws of this state, any community corrections  
26 officer may arrest or cause the arrest and detention of the offender  
27 pending a determination by the board whether sanctions should be  
28 imposed or the offender's community custody should be revoked. The  
29 community corrections officer shall report all facts and circumstances  
30 surrounding the alleged violation to the board, with recommendations.

31 (2) If the board or the department causes the arrest or detention  
32 of an offender for a violation that does not amount to a new crime and  
33 the offender is arrested or detained by local law enforcement or in a  
34 local jail, the board or department, whichever caused the arrest or  
35 detention, shall be financially responsible for local costs. Jail bed  
36 costs shall be allocated at the rate established under RCW 9.94A.740.

1       **Sec. 5.** RCW 9.95.430 and 2001 2nd sp.s. c 12 s 308 are each  
2 amended to read as follows:

3       Any offender released under RCW 9.95.420, 10.95.030(3), or section  
4 9 of this act who is arrested and detained in physical custody by the  
5 authority of a community corrections officer, or upon the written order  
6 of the board, shall not be released from custody on bail or personal  
7 recognizance, except upon approval of the board and the issuance by the  
8 board of an order reinstating the offender's release on the same or  
9 modified conditions. All chiefs of police, marshals of cities and  
10 towns, sheriffs of counties, and all police, prison, and peace officers  
11 and constables shall execute any such order in the same manner as any  
12 ordinary criminal process.

13       **Sec. 6.** RCW 9.95.435 and 2007 c 363 s 3 are each amended to read  
14 as follows:

15       (1) If an offender released by the board or a court under RCW  
16 9.95.420, 10.95.030(3), or section 9 of this act violates any condition  
17 or requirement of community custody, the board may transfer the  
18 offender to a more restrictive confinement status to serve up to the  
19 remaining portion of the sentence, less credit for any period actually  
20 spent in community custody or in detention awaiting disposition of an  
21 alleged violation and subject to the limitations of subsection (2) of  
22 this section.

23       (2) Following the hearing specified in subsection (3) of this  
24 section, the board may impose sanctions such as work release, home  
25 detention with electronic monitoring, work crew, community restitution,  
26 inpatient treatment, daily reporting, curfew, educational or counseling  
27 sessions, supervision enhanced through electronic monitoring, or any  
28 other sanctions available in the community, or may suspend the release  
29 and sanction up to sixty days' confinement in a local correctional  
30 facility for each violation, or revoke the release to community custody  
31 whenever an offender released by the board or a court under RCW  
32 9.95.420, 10.95.030(3), or section 9 of this act violates any condition  
33 or requirement of community custody.

34       (3) If an offender released by the board or a court under RCW  
35 9.95.420, 10.95.030(3), or section 9 of this act is accused of  
36 violating any condition or requirement of community custody, he or she  
37 is entitled to a hearing before the board or a designee of the board

1 prior to the imposition of sanctions. The hearing shall be considered  
2 as offender disciplinary proceedings and shall not be subject to  
3 chapter 34.05 RCW. The board shall develop hearing procedures and a  
4 structure of graduated sanctions consistent with the hearing procedures  
5 and graduated sanctions developed pursuant to RCW 9.94A.737. The board  
6 may suspend the offender's release to community custody and confine the  
7 offender in a correctional institution owned, operated by, or operated  
8 under contract with the state prior to the hearing unless the offender  
9 has been arrested and confined for a new criminal offense.

10 (4) The hearing procedures required under subsection (3) of this  
11 section shall be developed by rule and include the following:

12 (a) Hearings shall be conducted by members or designees of the  
13 board unless the board enters into an agreement with the department to  
14 use the hearing officers established under RCW 9.94A.737;

15 (b) The board shall provide the offender with findings and  
16 conclusions which include the evidence relied upon, and the reasons the  
17 particular sanction was imposed. The board shall notify the offender  
18 of the right to appeal the sanction and the right to file a personal  
19 restraint petition under court rules after the final decision of the  
20 board;

21 (c) The hearing shall be held unless waived by the offender, and  
22 shall be electronically recorded. For offenders not in total  
23 confinement, the hearing shall be held within thirty days of service of  
24 notice of the violation, but not less than twenty-four hours after  
25 notice of the violation. For offenders in total confinement, the  
26 hearing shall be held within thirty days of service of notice of the  
27 violation, but not less than twenty-four hours after notice of the  
28 violation. The board or its designee shall make a determination  
29 whether probable cause exists to believe the violation or violations  
30 occurred. The determination shall be made within forty-eight hours of  
31 receipt of the allegation;

32 (d) The offender shall have the right to: (i) Be present at the  
33 hearing; (ii) have the assistance of a person qualified to assist the  
34 offender in the hearing, appointed by the presiding hearing officer if  
35 the offender has a language or communications barrier; (iii) testify or  
36 remain silent; (iv) call witnesses and present documentary evidence;  
37 (v) question witnesses who appear and testify; and (vi) be represented  
38 by counsel if revocation of the release to community custody upon a



1 finding of violation is a probable sanction for the violation. The  
2 board may not revoke the release to community custody of any offender  
3 who was not represented by counsel at the hearing, unless the offender  
4 has waived the right to counsel; and

5 (e) The sanction shall take effect if affirmed by the presiding  
6 hearing officer.

7 (5) Within seven days after the presiding hearing officer's  
8 decision, the offender may appeal the decision to the full board or to  
9 a panel of three reviewing examiners designated by the chair of the  
10 board or by the chair's designee. The sanction shall be reversed or  
11 modified if a majority of the panel finds that the sanction was not  
12 reasonably related to any of the following: (a) The crime of  
13 conviction; (b) the violation committed; (c) the offender's risk of  
14 reoffending; or (d) the safety of the community.

15 (6) For purposes of this section, no finding of a violation of  
16 conditions may be based on unconfirmed or unconfirmable allegations.

17 **Sec. 7.** RCW 9.95.440 and 2008 c 231 s 45 are each amended to read  
18 as follows:

19 In the event the board suspends the release status of an offender  
20 released under RCW 9.95.420, 10.95.030(3), or section 9 of this act by  
21 reason of an alleged violation of a condition of release, or pending  
22 disposition of a new criminal charge, the board may nullify the  
23 suspension order and reinstate release under previous conditions or any  
24 new conditions the board determines advisable under RCW 9.94A.704.  
25 Before the board may nullify a suspension order and reinstate release,  
26 it shall determine that the best interests of society and the offender  
27 shall be served by such reinstatement rather than return to  
28 confinement.

29 **Sec. 8.** RCW 10.95.030 and 2010 c 94 s 3 are each amended to read  
30 as follows:

31 (1) Except as provided in subsections (2) and (3) of this section,  
32 any person convicted of the crime of aggravated first degree murder  
33 shall be sentenced to life imprisonment without possibility of release  
34 or parole. A person sentenced to life imprisonment under this section  
35 shall not have that sentence suspended, deferred, or commuted by any  
36 judicial officer and the indeterminate sentence review board or its

1 successor may not parole such prisoner nor reduce the period of  
2 confinement in any manner whatsoever including but not limited to any  
3 sort of good-time calculation. The department of social and health  
4 services or its successor or any executive official may not permit such  
5 prisoner to participate in any sort of release or furlough program.

6 (2) If, pursuant to a special sentencing proceeding held under RCW  
7 10.95.050, the trier of fact finds that there are not sufficient  
8 mitigating circumstances to merit leniency, the sentence shall be  
9 death. In no case, however, shall a person be sentenced to death if  
10 the person had an intellectual disability at the time the crime was  
11 committed, under the definition of intellectual disability set forth in  
12 (a) of this subsection. A diagnosis of intellectual disability shall  
13 be documented by a licensed psychiatrist or licensed psychologist  
14 designated by the court, who is an expert in the diagnosis and  
15 evaluation of intellectual disabilities. The defense must establish an  
16 intellectual disability by a preponderance of the evidence and the  
17 court must make a finding as to the existence of an intellectual  
18 disability.

19 (a) "Intellectual disability" means the individual has: (i)  
20 Significantly subaverage general intellectual functioning; (ii)  
21 existing concurrently with deficits in adaptive behavior; and (iii)  
22 both significantly subaverage general intellectual functioning and  
23 deficits in adaptive behavior were manifested during the developmental  
24 period.

25 (b) "General intellectual functioning" means the results obtained  
26 by assessment with one or more of the individually administered general  
27 intelligence tests developed for the purpose of assessing intellectual  
28 functioning.

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

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

34 (e) "Developmental period" means the period of time between  
35 conception and the eighteenth birthday.

36 (3) Any person convicted of the crime of aggravated first degree  
37 murder for an offense committed prior to the person's eighteenth

1 birthday shall be sentenced to a minimum term of total confinement not  
2 less than twenty years and not more than twenty-five years and a  
3 maximum term of life.

4 (a) The person shall become eligible for early release upon  
5 expiration of the minimum term. The court shall consider the following  
6 factors in determining the minimum term:

7 (i) The offender's age at the time of the offense;

8 (ii) The offender's level of participation in the offense;

9 (iii) The offender's intellectual capacity;

10 (iv) The offender's ability to appreciate the risks and  
11 consequences of his or her conduct;

12 (v) The degree of familial or peer pressure exerted upon the  
13 offender in the commission of the offense;

14 (vi) The offender's familial and community environment;

15 (vii) The offender's educational history;

16 (viii) Any history of trauma in the offender's life;

17 (ix) The offender's faith and community involvement;

18 (x) The offender's involvement in the child welfare system;

19 (xi) The offender's potential for rehabilitation;

20 (xii) The outcomes of a comprehensive mental health evaluation  
21 conducted by an adolescent mental health professional licensed in the  
22 state of Washington;

23 (xiii) Any other mitigating factors or circumstances.

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

36 (c) No later than one hundred eighty days prior to the expiration  
37 of the person's minimum term, the sentencing court or the sentencing  
38 court's successor shall conduct, and the offender shall participate in,

1 a hearing to determine whether the person should be released before  
2 expiration of the maximum term. The court shall consider the following  
3 factors in determining whether release will be granted:

4 (i) The extent to which issues concerning juvenile brain  
5 development contributed to the offense;

6 (ii) The offender's age at the time of the offense;

7 (iii) The offender's intellectual capacity;

8 (iv) The offender's level of participation in the offense;

9 (v) The offender's efforts towards rehabilitation, including  
10 participation in and completion of rehabilitation programs while in  
11 prison;

12 (vi) The offender's participation in and completion of educational  
13 and employment programming while in prison;

14 (vii) Whether the offender's character deficiencies have been  
15 reformed;

16 (viii) Any evidence submitted by the offender or the offender's  
17 counsel; and

18 (ix) Any other mitigating factors or circumstances.

19 (d) The court shall order the person released, under such  
20 affirmative and other conditions as the court determines appropriate,  
21 unless the court determines by a preponderance of the evidence that,  
22 despite such conditions, it is more likely than not that the person  
23 will commit new violent criminal law violations if released. If the  
24 court does not order the person released, the court shall set a new  
25 minimum term of no more than five additional years.

26 (e) In a hearing conducted under (c) of this subsection, the court  
27 shall provide opportunities for victims and survivors of victims of any  
28 crimes for which the offender has been convicted to present statements  
29 as set forth in RCW 7.69.032. To facilitate victim and survivor of  
30 victim involvement, county prosecutor's offices shall ensure that any  
31 victim impact statements and known contact information for victims of  
32 record and survivors of victims are forwarded as part of the judgment  
33 and sentence.

34 (f) In a hearing conducted under (c) of this subsection, the  
35 offender shall be entitled to be represented by an attorney of his or  
36 her choosing at his or her expense, except, upon the presentation of  
37 satisfactory evidence of indigency and the request for the appointment  
38 of an attorney by the offender, the court shall cause the appointment

1 of an attorney to represent the offender to be paid for at state  
2 expense, and, in addition, the court shall assume all or such other  
3 expenses in the presentation of evidence on behalf of the offender as  
4 it may have authorized. Attorneys for the representation of offenders  
5 at the review hearings shall be appointed by the superior courts for  
6 the counties where the conviction occurred and the attorneys shall be  
7 compensated in such manner and in such amount as shall be fixed in a  
8 schedule of fees adopted by rule of the court.

9 (g) An offender released by the court pursuant to (d) of this  
10 subsection is subject to the supervision of the department for a term  
11 that shall be determined by the court. The department shall monitor  
12 the offender's compliance with conditions imposed by the court and  
13 promptly report any violations to the court. Any violation of  
14 conditions established or modified by the court are subject to the  
15 provisions of RCW 9.95.425 through 9.95.440.

16 NEW SECTION. Sec. 9. A new section is added to chapter 9.94A RCW  
17 to read as follows:

18 (1) Notwithstanding any other provision of this chapter, any person  
19 convicted of one or more crimes committed prior to the person's  
20 eighteenth birthday who received an aggregate sentence of at least  
21 twenty years may petition the sentencing court for early release after  
22 serving no less than twenty years of total confinement, provided the  
23 person has not been convicted for any felony in the five years  
24 immediately prior to filing the petition, the person has not committed  
25 a major violation in the twelve months prior to filing the petition for  
26 early release, and the current sentence was not imposed under RCW  
27 10.95.030 or 9.94A.507.

28 (2) No later than one hundred eighty days prior to serving at least  
29 twenty years, the sentencing court or the sentencing court's successor  
30 shall conduct, and the offender shall participate in, a hearing to  
31 determine whether the person should be released before expiration of  
32 the maximum term. The court shall consider the following factors in  
33 determining whether release will be granted:

34 (a) The extent to which issues concerning juvenile brain  
35 development contributed to the offense;

36 (b) The offender's age at the time of the offense;

37 (c) The offender's intellectual capacity;

- 1 (d) The offender's level of participation in the offense;
- 2 (e) The offender's efforts made toward rehabilitation, including  
3 participation in and completion of rehabilitation programs while in  
4 prison;
- 5 (f) The offender's participation in and completion of educational  
6 and employment programming while in prison;
- 7 (g) Whether the offender's character deficiencies have been  
8 reformed;
- 9 (h) Any evidence submitted by the offender or the offender's  
10 counsel; and
- 11 (i) Any other mitigating factors or circumstances.

12 (3) The court shall order the person released, under such  
13 affirmative and other conditions as the court determines appropriate,  
14 unless the court determines by a preponderance of the evidence that,  
15 despite such conditions, it is more likely than not that the person  
16 will commit new violent criminal law violations if released. If the  
17 court does not order the person released, the court shall set a new  
18 minimum term of no more than five additional years.

19 (4) In a hearing conducted under subsection (2) of this section,  
20 the court shall provide opportunities for victims and survivors of  
21 victims of any crimes the offender has been convicted to present  
22 statements as set forth in RCW 7.69.032. To facilitate victim and  
23 survivor of victim involvement, county prosecutor's offices shall  
24 ensure that any victim impact statements and known contact information  
25 for victims of record and survivors of victims are forwarded as part of  
26 the judgment and sentence.

27 (5) An offender released by the court is subject to the supervision  
28 of the department for a term that shall be determined by the court.  
29 The term shall not exceed the maximum term of the sentence. The  
30 department shall monitor the offender's compliance with conditions  
31 imposed by the court and promptly report any violations to the court.  
32 Any violation of conditions established or modified by the court are  
33 subject to the provisions of RCW 9.95.425 through 9.95.440.

34 (6) In a hearing conducted under subsection (2) of this section,  
35 the offender shall be entitled to be represented by an attorney of his  
36 or her choosing at his or her expense, except, upon the presentation of  
37 satisfactory evidence of indigency and the request for the appointment  
38 of an attorney by the offender, the court shall cause the appointment

1 of an attorney to represent the offender to be paid for at state  
2 expense, and, in addition, the court shall assume all or such other  
3 expenses in the presentation of evidence on behalf of the offender as  
4 it may have authorized. Attorneys for the representation of offenders  
5 at the review hearings shall be appointed by the superior courts for  
6 the counties where the conviction occurred and the attorneys shall be  
7 compensated in such manner and in such amount as shall be fixed in a  
8 schedule of fees adopted by rule of the court.

9 NEW SECTION. **Sec. 10.** A new section is added to chapter 10.95 RCW  
10 to read as follows:

11 (1) A person, who was sentenced prior to June 1, 2013, to a term of  
12 life without the possibility of parole for an offense committed prior  
13 to their eighteenth birthday, shall be returned to the sentencing court  
14 or the sentencing court's successor for the setting of a minimum and  
15 maximum term. In no case may the minimum term be fixed at less than  
16 twenty years or more than twenty-five years. The maximum term is life.  
17 To the extent relevant information is available, the court shall  
18 consider the following factors in determining the minimum term:

- 19 (a) The offender's age at the time of the offense;
- 20 (b) The offender's level of participation in the offense;
- 21 (c) The offender's intellectual capacity;
- 22 (d) The offender's ability to appreciate the risks and consequences  
23 of his or her conduct at the time of the offense;
- 24 (e) The degree of familial or peer pressure exerted upon the  
25 offender in the commission of the offense;
- 26 (f) The offender's familial and community environment at the time  
27 of the offense;
- 28 (g) The offender's educational history;
- 29 (h) The history of trauma in the offender's life;
- 30 (i) The offender's faith and community involvement;
- 31 (j) The offender's involvement in the child welfare system;
- 32 (k) The offender's potential for rehabilitation;
- 33 (l) Any other mitigating factors or circumstances.

34 Release and supervision of a person will be governed by RCW  
35 10.95.030(3)(g).

36 (2) The court shall provide an opportunity for victims and

1 survivors of victims of any crimes for which the offender has been  
2 convicted to present a statement personally or by representation.

3 (3) The term of confinement the person has served to date shall be  
4 included in calculating the minimum term remaining to be served.

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

9 NEW SECTION. **Sec. 12.** This act is necessary for the immediate  
10 preservation of the public peace, health, or safety, or support of the  
11 state government and its existing public institutions, and takes effect  
12 June 1, 2013.

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