

SECOND SUBSTITUTE SENATE BILL 5064

State of Washington 63rd Legislature 2014 Regular Session

By Senate Human Services & Corrections (originally sponsored by Senators Hargrove and Kline)

READ FIRST TIME 02/07/14.

1 AN ACT Relating to persons sentenced for offenses committed prior
2 to reaching eighteen years of age; amending RCW 9.94A.510, 9.94A.540,
3 9.94A.6332, 9.95.425, 9.95.430, 9.95.435, 9.95.440, and 10.95.030;
4 reenacting and amending RCW 9.94A.729; adding a new section to chapter
5 9.94A RCW; adding new sections to chapter 10.95 RCW; prescribing
6 penalties; providing an effective date; and declaring an emergency.

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

8 Sec. 1. RCW 9.94A.510 and 2002 c 290 s 10 are each amended to read
9 as follows:

11 TABLE 1

12 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.

XV	23y4m	24y4m	25y4m	26y4m	27y4m	28y4m	30y4m	32y10m	36y	40y
	240-	250-	261-	271-	281-	291-	312-	338-	370-	411-
	320	333	347	361	374	388	416	450	493	548
XIV	14y4m	15y4m	16y2m	17y	17y11m	18y9m	20y5m	22y2m	25y7m	29y
	123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
	220	234	244	254	265	275	295	316	357	397
XIII	12y	13y	14y	15y	16y	17y	19y	21y	25y	29y
	123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
	164	178	192	205	219	233	260	288	342	397
XII	9y	9y11m	10y9m	11y8m	12y6m	13y5m	15y9m	17y3m	20y3m	23y3m
	93-	102-	111-	120-	129-	138-	162-	178-	209-	240-
	123	136	147	160	171	184	216	236	277	318
XI	7y6m	8y4m	9y2m	9y11m	10y9m	11y7m	14y2m	15y5m	17y11m	20y5m
	78-	86-	95-	102-	111-	120-	146-	159-	185-	210-
	102	114	125	136	147	158	194	211	245	280
X	5y	5y6m	6y	6y6m	7y	7y6m	9y6m	10y6m	12y6m	14y6m
	51-	57-	62-	67-	72-	77-	98-	108-	129-	149-
	68	75	82	89	96	102	130	144	171	198
IX	3y	3y6m	4y	4y6m	5y	5y6m	7y6m	8y6m	10y6m	12y6m
	31-	36-	41-	46-	51-	57-	77-	87-	108-	129-
	41	48	54	61	68	75	102	116	144	171
VIII	2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m
	21-	26-	31-	36-	41-	46-	67-	77-	87-	108-
	27	34	41	48	54	61	89	102	116	144
VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m
	15-	21-	26-	31-	36-	41-	57-	67-	77-	87-
	20	27	34	41	48	54	75	89	102	116
VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m
	12+-	15-	21-	26-	31-	36-	46-	57-	67-	77-
	14	20	27	34	41	48	61	75	89	102
V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
	6-	12+-	13-	15-	22-	33-	41-	51-	62-	72-
	12	14	17	20	29	43	54	68	82	96
IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
	3-	6-	12+-	13-	15-	22-	33-	43-	53-	63-
	9	12	14	17	20	29	43	57	70	84
III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
	1-	3-	4-	9-	12+-	17-	22-	33-	43-	51-
	3	8	12	12	16	22	29	43	57	68
II		4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m
	0-90	2-	3-	4-	12+-	14-	17-	22-	33-	43-
	Days	6	9	12	14	18	22	29	43	57
I			3m	4m	5m	8m	13m	16m	20m	2y2m
	0-60	0-90	2-	2-	3-	4-	12+-	14-	17-	22-
	Days	Days	5	6	8	12	14	18	22	29

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

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

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

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

13 (b) An offender convicted of the crime of assault in the first  
14 degree or assault of a child in the first degree where the offender  
15 used force or means likely to result in death or intended to kill the  
16 victim shall be sentenced to a term of total confinement not less than  
17 five years.

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

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

24 (e) An offender convicted of the crime of aggravated first degree  
25 murder for a murder that was committed prior to the offender's  
26 eighteenth birthday shall be sentenced to a term of total confinement  
27 not less than twenty-five years.

28 (2) During such minimum terms of total confinement, no offender  
29 subject to the provisions of this section is eligible for community  
30 custody, earned release time, furlough, home detention, partial  
31 confinement, work crew, work release, or any other form of early  
32 release authorized under RCW 9.94A.728, or any other form of authorized  
33 leave of absence from the correctional facility while not in the direct  
34 custody of a corrections officer. The provisions of this subsection  
35 shall not apply: (a) In the case of an offender in need of emergency  
36 medical treatment; (b) for the purpose of commitment to an inpatient

1 treatment facility in the case of an offender convicted of the crime of  
2 rape in the first degree; or (c) for an extraordinary medical placement  
3 when authorized under RCW 9.94A.728(~~(+4)~~) (3).

4 (3)(a) Subsection (1)(a) through (d) of this section shall not be  
5 applied in sentencing of juveniles tried as adults pursuant to RCW  
6 13.04.030(1)(e)(i).

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

9 **Sec. 3.** RCW 9.94A.6332 and 2010 c 224 s 11 are each amended to  
10 read as follows:

11 The procedure for imposing sanctions for violations of sentence  
12 conditions or requirements is as follows:

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

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

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

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

24 (5) If the offender was released pursuant to section 10 of this  
25 act, any sanctions shall be imposed by the board pursuant to RCW  
26 9.95.435.

27 (6) If the offender was sentenced pursuant to RCW 10.95.030(3) or  
28 section 11 of this act, any sanctions shall be imposed by the board  
29 pursuant to RCW 9.95.435.

30 (7) In any other case, if the offender is being supervised by the  
31 department, any sanctions shall be imposed by the department pursuant  
32 to RCW 9.94A.737. If a probationer is being supervised by the  
33 department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, upon  
34 receipt of a violation hearing report from the department, the court  
35 retains any authority that those statutes provide to respond to a  
36 probationer's violation of conditions.

1       (~~(6)~~) (8) If the offender is not being supervised by the  
2 department, any sanctions shall be imposed by the court pursuant to RCW  
3 9.94A.6333.

4       **Sec. 4.** RCW 9.94A.729 and 2013 2nd sp.s. c 14 s 2 and 2013 c 266  
5 s 1 are each reenacted and amended to read as follows:

6       (1)(a) The term of the sentence of an offender committed to a  
7 correctional facility operated by the department may be reduced by  
8 earned release time in accordance with procedures that shall be  
9 developed and adopted by the correctional agency having jurisdiction in  
10 which the offender is confined. The earned release time shall be for  
11 good behavior and good performance, as determined by the correctional  
12 agency having jurisdiction. The correctional agency shall not credit  
13 the offender with earned release credits in advance of the offender  
14 actually earning the credits.

15       (b) Any program established pursuant to this section shall allow an  
16 offender to earn early release credits for presentence incarceration.  
17 If an offender is transferred from a county jail to the department, the  
18 administrator of a county jail facility shall certify to the department  
19 the amount of time spent in custody at the facility and the number of  
20 days of early release credits lost or not earned. The department may  
21 approve a jail certification from a correctional agency that calculates  
22 early release time based on the actual amount of confinement time  
23 served by the offender before sentencing when an erroneous calculation  
24 of confinement time served by the offender before sentencing appears on  
25 the judgment and sentence. The department must adjust an offender's  
26 rate of early release listed on the jail certification to be consistent  
27 with the rate applicable to offenders in the department's facilities.  
28 However, the department is not authorized to adjust the number of  
29 presentence early release days that the jail has certified as lost or  
30 not earned.

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

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

1       (a) In the case of an offender sentenced pursuant to RCW  
2 10.95.030(3) or section 11 of this act, the aggregate earned release  
3 time may not exceed ten percent of the sentence.

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

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

12       (~~(c)~~) (d) An offender is qualified to earn up to fifty percent of  
13 aggregate earned release time if he or she:

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

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

17       (A) A sex offense;

18       (B) A violent offense;

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

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

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

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

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

27       (iii) Has no prior conviction for the offenses listed in (~~(c)~~)  
28 (d)(ii) of this subsection;

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

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

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

37       (4) The department shall perform a risk assessment of each offender  
38 who may qualify for earned early release under subsection (3)(~~(c)~~)

1 (d) of this section utilizing the risk assessment tool recommended by  
2 the Washington state institute for public policy. Subsection  
3 ~~(3)(e)~~ (d) of this section does not apply to offenders convicted  
4 after July 1, 2010.

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

9 (b) The department shall, as a part of its program for release to  
10 the community in lieu of earned release, require the offender to  
11 propose a release plan that includes an approved residence and living  
12 arrangement. All offenders with community custody terms eligible for  
13 release to community custody in lieu of earned release shall provide an  
14 approved residence and living arrangement prior to release to the  
15 community;

16 (c) The department may deny transfer to community custody in lieu  
17 of earned release time if the department determines an offender's  
18 release plan, including proposed residence location and living  
19 arrangements, may violate the conditions of the sentence or conditions  
20 of supervision, place the offender at risk to violate the conditions of  
21 the sentence, place the offender at risk to reoffend, or present a risk  
22 to victim safety or community safety. The department's authority under  
23 this section is independent of any court-ordered condition of sentence  
24 or statutory provision regarding conditions for community custody;

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

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

32 (ii) Provide rental vouchers to the offender for a period not to  
33 exceed three months if rental assistance will result in an approved  
34 release plan.

35 A voucher must be provided in conjunction with additional  
36 transition support programming or services that enable an offender to  
37 participate in services including, but not limited to, substance abuse

1 treatment, mental health treatment, sex offender treatment, educational  
2 programming, or employment programming;

3 (e) The department shall maintain a list of housing providers that  
4 meets the requirements of RCW 72.09.285. If more than two voucher  
5 recipients will be residing per dwelling unit, as defined in RCW  
6 59.18.030, rental vouchers for those recipients may only be paid to a  
7 housing provider on the department's list;

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

12 (6) An offender serving a term of confinement imposed under RCW  
13 9.94A.670(5)(a) is not eligible for earned release credits under this  
14 section.

15 **Sec. 5.** RCW 9.95.425 and 2009 c 28 s 30 are each amended to read  
16 as follows:

17 (1) Whenever the board or a community corrections officer of this  
18 state has reason to believe an offender released under RCW 9.95.420,  
19 10.95.030(3), or section 10 of this act has violated a condition of  
20 community custody or the laws of this state, any community corrections  
21 officer may arrest or cause the arrest and detention of the offender  
22 pending a determination by the board whether sanctions should be  
23 imposed or the offender's community custody should be revoked. The  
24 community corrections officer shall report all facts and circumstances  
25 surrounding the alleged violation to the board, with recommendations.

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

32 **Sec. 6.** RCW 9.95.430 and 2001 2nd sp.s. c 12 s 308 are each  
33 amended to read as follows:

34 Any offender released under RCW 9.95.420, 10.95.030(3), or section  
35 10 of this act who is arrested and detained in physical custody by the  
36 authority of a community corrections officer, or upon the written order



1 of the board, shall not be released from custody on bail or personal  
2 recognizance, except upon approval of the board and the issuance by the  
3 board of an order reinstating the offender's release on the same or  
4 modified conditions. All chiefs of police, marshals of cities and  
5 towns, sheriffs of counties, and all police, prison, and peace officers  
6 and constables shall execute any such order in the same manner as any  
7 ordinary criminal process.

8 **Sec. 7.** RCW 9.95.435 and 2007 c 363 s 3 are each amended to read  
9 as follows:

10 (1) If an offender released by the board under RCW 9.95.420,  
11 10.95.030(3), or section 10 of this act violates any condition or  
12 requirement of community custody, the board may transfer the offender  
13 to a more restrictive confinement status to serve up to the remaining  
14 portion of the sentence, less credit for any period actually spent in  
15 community custody or in detention awaiting disposition of an alleged  
16 violation and subject to the limitations of subsection (2) of this  
17 section.

18 (2) Following the hearing specified in subsection (3) of this  
19 section, the board may impose sanctions such as work release, home  
20 detention with electronic monitoring, work crew, community restitution,  
21 inpatient treatment, daily reporting, curfew, educational or counseling  
22 sessions, supervision enhanced through electronic monitoring, or any  
23 other sanctions available in the community, or may suspend the release  
24 and sanction up to sixty days' confinement in a local correctional  
25 facility for each violation, or revoke the release to community custody  
26 whenever an offender released by the board under RCW 9.95.420,  
27 10.95.030(3), or section 10 of this act violates any condition or  
28 requirement of community custody.

29 (3) If an offender released by the board under RCW 9.95.420,  
30 10.95.030(3), or section 10 of this act is accused of violating any  
31 condition or requirement of community custody, he or she is entitled to  
32 a hearing before the board or a designee of the board prior to the  
33 imposition of sanctions. The hearing shall be considered as offender  
34 disciplinary proceedings and shall not be subject to chapter 34.05 RCW.  
35 The board shall develop hearing procedures and a structure of graduated  
36 sanctions consistent with the hearing procedures and graduated  
37 sanctions developed pursuant to RCW 9.94A.737. The board may suspend

1 the offender's release to community custody and confine the offender in  
2 a correctional institution owned, operated by, or operated under  
3 contract with the state prior to the hearing unless the offender has  
4 been arrested and confined for a new criminal offense.

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

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

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

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

27 (d) The offender shall have the right to: (i) Be present at the  
28 hearing; (ii) have the assistance of a person qualified to assist the  
29 offender in the hearing, appointed by the presiding hearing officer if  
30 the offender has a language or communications barrier; (iii) testify or  
31 remain silent; (iv) call witnesses and present documentary evidence;  
32 (v) question witnesses who appear and testify; and (vi) be represented  
33 by counsel if revocation of the release to community custody upon a  
34 finding of violation is a probable sanction for the violation. The  
35 board may not revoke the release to community custody of any offender  
36 who was not represented by counsel at the hearing, unless the offender  
37 has waived the right to counsel; and

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

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

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

13 **Sec. 8.** RCW 9.95.440 and 2008 c 231 s 45 are each amended to read  
14 as follows:

15 In the event the board suspends the release status of an offender  
16 released under RCW 9.95.420, 10.95.030(3), or section 10 of this act by  
17 reason of an alleged violation of a condition of release, or pending  
18 disposition of a new criminal charge, the board may nullify the  
19 suspension order and reinstate release under previous conditions or any  
20 new conditions the board determines advisable under RCW 9.94A.704.  
21 Before the board may nullify a suspension order and reinstate release,  
22 it shall determine that the best interests of society and the offender  
23 shall be served by such reinstatement rather than return to  
24 confinement.

25 **Sec. 9.** RCW 10.95.030 and 2010 c 94 s 3 are each amended to read  
26 as follows:

27 (1) Except as provided in subsections (2) and (3) of this section,  
28 any person convicted of the crime of aggravated first degree murder  
29 shall be sentenced to life imprisonment without possibility of release  
30 or parole. A person sentenced to life imprisonment under this section  
31 shall not have that sentence suspended, deferred, or commuted by any  
32 judicial officer and the indeterminate sentence review board or its  
33 successor may not parole such prisoner nor reduce the period of  
34 confinement in any manner whatsoever including but not limited to any  
35 sort of good-time calculation. The department of social and health

1 services or its successor or any executive official may not permit such  
2 prisoner to participate in any sort of release or furlough program.

3 (2) If, pursuant to a special sentencing proceeding held under RCW  
4 10.95.050, the trier of fact finds that there are not sufficient  
5 mitigating circumstances to merit leniency, the sentence shall be  
6 death. In no case, however, shall a person be sentenced to death if  
7 the person had an intellectual disability at the time the crime was  
8 committed, under the definition of intellectual disability set forth in  
9 (a) of this subsection. A diagnosis of intellectual disability shall  
10 be documented by a licensed psychiatrist or licensed psychologist  
11 designated by the court, who is an expert in the diagnosis and  
12 evaluation of intellectual disabilities. The defense must establish an  
13 intellectual disability by a preponderance of the evidence and the  
14 court must make a finding as to the existence of an intellectual  
15 disability.

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

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

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

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

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

33 (3)(a)(i) Any person convicted of the crime of aggravated first  
34 degree murder for an offense committed prior to the person's sixteenth  
35 birthday shall be sentenced to a maximum term of life imprisonment and  
36 a minimum term of total confinement of twenty-five years.

37 (ii) Any person convicted of the crime of aggravated first degree  
38 murder for an offense committed when the person is at least sixteen

1 years old but less than eighteen years old shall be sentenced to a  
2 maximum term of life imprisonment and a minimum term of total  
3 confinement of no less than twenty-five years. A minimum term of life  
4 may be imposed, in which case the person will be ineligible for parole  
5 or early release.

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

12 (c) A person sentenced under this subsection shall serve the  
13 sentence in a facility or institution operated, or utilized under  
14 contract, by the state. During the minimum term of total confinement,  
15 the person shall not be eligible for community custody, earned release  
16 time, furlough, home detention, partial confinement, work crew, work  
17 release, or any other form of early release authorized under RCW  
18 9.94A.728, or any other form of authorized leave or absence from the  
19 correctional facility while not in the direct custody of a corrections  
20 officer. The provisions of this subsection shall not apply: (i) In  
21 the case of an offender in need of emergency medical treatment; or (ii)  
22 for an extraordinary medical placement when authorized under RCW  
23 9.94A.728(3).

24 (d) Any person sentenced pursuant to this subsection shall be  
25 subject to community custody under the supervision of the department of  
26 corrections and the authority of the indeterminate sentence review  
27 board for any period of time the person is released from total  
28 confinement before the expiration of the maximum sentence. As part of  
29 any sentence under this subsection, the court shall require the person  
30 to comply with any conditions imposed by the board.

31 (e) No later than five years prior to the expiration of the  
32 person's minimum term, the department of corrections shall conduct an  
33 assessment of the offender and identify programming and services that  
34 would be appropriate to prepare the offender for return to the  
35 community. To the extent possible, the department shall make  
36 programming available as identified by the assessment.

37 (f) No later than one hundred eighty days prior to the expiration  
38 of the person's minimum term, the department of corrections shall

1 conduct, and the offender shall participate in, an examination of the  
2 person, incorporating methodologies that are recognized by experts in  
3 the prediction of dangerousness, and including a prediction of the  
4 probability that the person will engage in future criminal behavior if  
5 released on conditions to be set by the board. The board may consider  
6 a person's failure to participate in an evaluation under this  
7 subsection in determining whether to release the person. The board  
8 shall order the person released, under such affirmative and other  
9 conditions as the board determines appropriate, unless the board  
10 determines by a preponderance of the evidence that, despite such  
11 conditions, it is more likely than not that the person will commit new  
12 criminal law violations if released. If the board does not order the  
13 person released, the board shall set a new minimum term not to exceed  
14 five additional years. The board shall give public safety  
15 considerations the highest priority when making all discretionary  
16 decisions regarding the ability for release and conditions of release.

17 (g) In a hearing conducted under (f) of this subsection, the board  
18 shall provide opportunities for victims and survivors of victims of any  
19 crimes for which the offender has been convicted to present statements  
20 as set forth in RCW 7.69.032. The procedures for victim and survivor  
21 of victim input shall be developed by rule. To facilitate victim and  
22 survivor of victim involvement, county prosecutor's offices shall  
23 ensure that any victim impact statements and known contact information  
24 for victims of record and survivors of victims are forwarded as part of  
25 the judgment and sentence.

26 (h) An offender released by the board is subject to the supervision  
27 of the department of corrections for life. The department shall  
28 monitor the offender's compliance with conditions of community custody  
29 imposed by the court, department, or board, and promptly report any  
30 violations to the board. Any violation of conditions of community  
31 custody established or modified by the board are subject to the  
32 provisions of RCW 9.95.425 through 9.95.440.

33 NEW SECTION. Sec. 10. A new section is added to chapter 9.94A RCW  
34 to read as follows:

35 (1) Notwithstanding any other provision of this chapter, any person  
36 convicted of one or more crimes committed prior to the person's  
37 eighteenth birthday may petition the indeterminate sentence review

1 board for early release after serving no less than twenty years of  
2 total confinement, provided the person has not been convicted for any  
3 crime committed subsequent to the person's eighteenth birthday, the  
4 person has not committed a major violation in the twelve months prior  
5 to filing the petition for early release, and the current sentence was  
6 not imposed under RCW 10.95.030 or 9.94A.507.

7 (2) When an offender who will be eligible to petition under this  
8 section has served fifteen years, the department shall conduct an  
9 assessment of the offender and identify programming and services that  
10 would be appropriate to prepare the offender for return to the  
11 community. To the extent possible, the department shall make  
12 programming available as identified by the assessment.

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

30 (4) In a hearing conducted under subsection (3) of this section,  
31 the board shall provide opportunities for victims and survivors of  
32 victims of any crimes for which the offender has been convicted to  
33 present statements as set forth in RCW 7.69.032. The procedures for  
34 victim and survivor of victim input shall be developed by rule. To  
35 facilitate victim and survivor of victim involvement, county  
36 prosecutor's offices shall ensure that any victim impact statements and  
37 known contact information for victims of record and survivors of  
38 victims are forwarded as part of the judgment and sentence.

1 (5) An offender released by the board is subject to the supervision  
2 of the department for the length of the court imposed term of  
3 incarceration. The department shall monitor the offender's compliance  
4 with conditions of community custody imposed by the court, department,  
5 or board, and promptly report any violations to the board. Any  
6 violation of conditions of community custody established or modified by  
7 the board are subject to the provisions of RCW 9.95.425 through  
8 9.95.440.

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

12 NEW SECTION. **Sec. 11.** A new section is added to chapter 10.95 RCW  
13 to read as follows:

14 (1) A person, who was sentenced prior to June 1, 2014, to a term of  
15 life without the possibility of parole for an offense committed prior  
16 to their eighteenth birthday, shall be returned to the sentencing court  
17 or the sentencing court's successor for sentencing consistent with RCW  
18 10.95.030. Release and supervision of a person who receives a minimum  
19 term of less than life will be governed by RCW 10.95.030.

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

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

26 (4) If a person receives a minimum term sentence under this  
27 section, no motion for collateral attack on the judgment and sentence  
28 as defined by RCW 10.73.090(2) may be filed after entry of the order  
29 setting a minimum term, if the judgment and sentence is valid on its  
30 face and was rendered by a court of competent jurisdiction, unless the  
31 petition or motion is based solely on one of the grounds set forth in  
32 RCW 10.73.100.

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

35 Sections 1 through 9 of this act apply to all sentencing hearings



1 conducted on or after June 1, 2014, regardless of the date of an  
2 offender's underlying offense.

3 NEW SECTION. **Sec. 13.** If any provision of this act or its  
4 application to any person or circumstance is held invalid, the  
5 remainder of the act or the application of the provision to other  
6 persons or circumstances is not affected.

7 NEW SECTION. **Sec. 14.** This act is necessary for the immediate  
8 preservation of the public peace, health, or safety, or support of the  
9 state government and its existing public institutions, and takes effect  
10 June 1, 2014.

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