
Public Safety Committee

HB 1540

Brief Description: Sentencing for certain serious offenses committed by persons under eighteen.

Sponsors: Representatives Goodman, Frame, Appleton and Ormsby.

Brief Summary of Bill

- Modifies the sentencing requirements for youth convicted of Aggravated Murder in the first degree.
- Modifies the eligibility criteria for petitioning the Indeterminate Sentence Review Board for early release from a sentence for a crime committed as a youth.

Hearing Date: 1/29/19

Staff: Kelly Leonard (786-7147).

Background:

Adult v. Juvenile Court Jurisdiction.

In Washington, adults charged with felony crimes have their cases heard in the superior court system. Sentences for adults are prescribed according to certain ranges and other requirements established in state statute. Juvenile courts are a division of the superior court system. These courts have jurisdiction over youth under the age of 18 (referred to as "youth") charged with criminal offenses. Convictions in juvenile court generally result in shorter sentences than those in adult court, with a greater emphasis placed on rehabilitation.

A prosecutor may petition a juvenile court to transfer a youth to adult court under certain circumstances. In addition to discretionary transfer, state statute requires automatic decline of jurisdiction to the adult court for certain youth. Youth ages 16 and 17 are automatically declined to adult court when charged with certain serious violent offenses, including Aggravated Murder

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in the first degree. Once a youth is transferred to adult court, he or she is subject to the same sentencing laws as adults, with some exceptions.

Aggravated Murder in the First Degree.

A person is guilty of Aggravated Murder in the first degree if he or she commits Murder in the first degree and one or more of 14 statutory aggravating circumstances are present. Aggravated Murder in the first degree is the most serious criminal offense under state law, mandating the severest consequences. Prior to 2005, a conviction of Aggravated Murder in the first degree resulted in either a sentence of life imprisonment without the possibility of release or, if sufficient mitigating factors were not present, the death penalty. However, federal and state court decisions have reduced or modified sentences for the offense.

In 2005, the United States Supreme Court held, in *Roper v. Simmons*, that the Eighth Amendment ban on cruel and unusual punishment forbids the imposition of a sentence of death for youth offenders. Then, in 2012, the United States Supreme Court held, in *Miller v. Alabama*, that the Eighth Amendment also forbids a sentencing scheme automatically mandating life in prison without the possibility of release for youth offenders.

Following *Miller v. Alabama*, the state modified the statutes governing Aggravated Murder. Youth who commit Aggravated Murder in the first degree must be sentenced to a 25-year minimum sentence if the youth committed the crime before the age of 16, or a minimum sentence between 25 years and life if the youth committed the crime at age 16 or 17. Life without the possibility of release is available at the discretion of the judge for youths who commit the crime at age 16 or 17. In setting a minimum term, the court must take into account mitigating factors established in *Miller v. Alabama*. When the new law went into effect, persons serving sentences for Aggravated Murder in the first degree committed as youth were resentenced by the superior courts.

After a youth has completed his or her minimum term for Aggravated Murder in the first degree, the Indeterminate Sentence Review Board (ISRB) must review his or her case for the possibility of release. The ISRB must order release unless it is determined by a preponderance of evidence that, despite conditions, it is more likely than not that the person will commit new crimes if released. If the ISRB does not order release, the ISRB must set a new minimum term not to exceed an additional five years. If an offender is released, the offender is subject to community custody under the supervision of the Department of Corrections (DOC) and the authority of the ISRB for a specified period of time.

In 2018, the Washington Supreme Court held, in *State v. Bassett*, that life in prison without the possibility of release for youth offenders constitutes cruel punishment in violation of Article 1, section 14 of the state Constitution. The court found that the state's prior changes to the Aggravated Murder in the first degree law were unconstitutional insofar as they still authorize the court to sentence youth offenders to life in prison without the possibility of release for acts committed at age 16 or 17.

Also in 2018, the Washington Supreme Court held, in *State v. Gregory*, that the death penalty provisions for adult offenders, as applied, are unconstitutional.

Other Crimes Resulting in Long Sentences.

In 2013, the state established procedures for reviewing certain offenders who committed their crimes as youth for possible early release, often referred to as "Juvenile Board cases." Any person convicted of one or more crimes committed prior to his or her eighteenth birthday may petition the ISRB for early release after serving no less than 20 years in total confinement, provided that the person has not had any new convictions after the person's eighteenth birthday, has not had a major violation in the 12 months prior to the petition, and is not serving a sentence for Aggravated Murder in the first degree or a sex offense. The review, release, and supervision requirements for Juvenile Board cases are similar to those established for youth convicted of Aggravated Murder in the first degree.

Summary of Bill:

Aggravated Murder in the First Degree.

Sentences for Aggravated Murder in the first degree committed by youth offenders are modified. The authority to impose a sentence of life in prison without the possibility of release is removed.

Statutory mandatory minimum sentences for youth offenders are removed. Instead, the court must sentence youth offenders to an indeterminate range by establishing a minimum and maximum term. The minimum may not exceed 25 years, and the maximum may not exceed a life sentence. In addition to the current factors in statute, when sentencing a youth offender, the court must take into account any demonstrated progress towards rehabilitation following the commission of the crime. After serving the minimum term, a youth offender is eligible for review by the ISRB as provided in current law.

All persons incarcerated for Aggravated Murder in the first degree committed prior to the effective date of the bill and prior to age 18 must be resentenced in superior court.

Other Crimes Resulting in Long Sentences.

The eligibility criteria for Juvenile Board cases are modified. The restriction against petitioning for a person with a separate conviction of an offense occurring after his or her eighteenth birthday is removed, thereby allowing such person to petition the board if he or she meets the other criteria.

Appropriation: None.

Fiscal Note: Requested on January 24, 2019.

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