

# HOUSE BILL REPORT

## HB 1396

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**As Reported by House Committee On:**  
Community Safety, Justice, & Reentry

**Title:** An act relating to persons sentenced for aggravated first degree murder committed prior to reaching 21 years of age.

**Brief Description:** Concerning persons sentenced for aggravated first degree murder committed prior to reaching 21 years of age.

**Sponsors:** Representatives Goodman and Bateman.

**Brief History:**

**Committee Activity:**

Community Safety, Justice, & Reentry: 1/23/23, 1/24/23, 1/15/24, 1/29/24 [DPS].

**Brief Summary of Substitute Bill**

- Requires the sentencing court to impose a maximum term of life imprisonment and a minimum term of total confinement of no less than 25 years for Aggravated Murder in the first degree where the perpetrator committed the offense at age 18 to 20 if the court determines that certain mitigating factors of youthfulness apply, or to instead impose life imprisonment without parole if the court determines that those factors do not apply.
- Requires resentencing for any person who was sentenced prior to May 1, 2024, to life imprisonment without parole for an offense committed at age 18 to 20.

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### HOUSE COMMITTEE ON COMMUNITY SAFETY, JUSTICE, & REENTRY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Goodman, Chair; Simmons, Vice Chair; Davis, Farivar, Fosse and Ramos.

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

**Minority Report:** Do not pass. Signed by 3 members: Representatives Mosbrucker, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Graham.

**Staff:** Corey Patton (786-7388).

**Background:**

Aggravated Murder in the First Degree.

A person is guilty of Aggravated Murder in the first degree if the person 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.

Adults and juveniles convicted of the offense are subject to different sentencing requirements.

*Age 15 and Younger.*

A person who commits Aggravated Murder in the first degree at age 15 or younger must be sentenced to a maximum term of life imprisonment and a minimum term of total confinement of 25 years.

*Age 16 to 17.*

A person who commits Aggravated Murder in the first degree at age 16 or 17 must be sentenced to a maximum term of life imprisonment and a minimum term of total confinement of no less than 25 years, and the person may not be sentenced to life imprisonment without parole. In setting a minimum term, the court must take into account certain mitigating factors established by the Supreme Court of the United States in *Miller v. Alabama*. The *Miller* mitigating factors include the: (1) person's age; (2) person's childhood and life experience; (3) degree of responsibility the person was capable of exercising; and (4) person's chances of becoming rehabilitated.

*Age 18 to 20.*

State law contains statutory provisions that mandate specific sentences for Aggravated Murder in the first degree committed at age 18 or older. Prior to 2018 a person who committed Aggravated Murder in the first degree at age 18 or older was required to be sentenced to life imprisonment without parole or, if sufficient mitigating factors were not present, death. However, in 2018 the Washington Supreme Court held, in *State v. Gregory*, that the death penalty is unconstitutional as applied. In 2021 the Washington Supreme Court also held, in *In re Monschke*, that a person who commits Aggravated Murder in the first degree at age 18 to 20 is entitled to a consideration of the *Miller* mitigating factors at sentencing, which may allow the court to impose a sentence other than life imprisonment without parole.

*Age 21 and Older.*

A person who commits Aggravated Murder in the first degree at age 21 or older must be sentenced to life imprisonment without parole.

### Indeterminate Sentence Review Board.

After an eligible person has completed the minimum term of the person's sentence for Aggravated Murder in the first degree, the Indeterminate Sentence Review Board (ISRB) must review the person's case for the possibility of release. The ISRB must order the person's 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 the person is released, the person is subject to community custody under the supervision of the Department of Corrections and the authority of the ISRB for a specified period of time.

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### **Summary of Substitute Bill:**

Statutory sentencing requirements for Aggravated Murder in the first degree are modified to provide that when a perpetrator commits such offense at age 18 to 20, the court must impose a maximum term of life imprisonment and a minimum term of total confinement of no less than 25 years if the court determines that the mitigating factors described by the Supreme Court of the United States in *Miller v. Alabama* apply. However, if the court determines that those mitigating factors do not apply, the court must instead impose life imprisonment without parole. A person who was sentenced prior to May 1, 2024, to a term of life imprisonment without parole for an offense committed at age 18 to 20 must be resentenced consistent with the adjusted sentencing requirements for Aggravated Murder in the first degree.

### **Substitute Bill Compared to Original Bill:**

The substitute bill: (1) eliminates amendatory language related to sentencing persons who committed Aggravated Murder in the first degree at age 16 to 17, and instead restores current law with respect to sentencing such persons; (2) requires the sentencing court to impose a maximum term of life imprisonment and a minimum term of total confinement of no less than 25 years for Aggravated Murder in the first degree where the perpetrator committed the crime at age 18 to 20 if the court determines that certain mitigating factors of youthfulness apply, or to instead impose life imprisonment without parole if such factors do not apply; (3) provides an effective date of May 1, 2024, rather than July 1, 2023; and (4) updates underlying statutory language to reflect changes enacted during the 2023 legislative session.

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**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on January 29, 2024.

**Effective Date of Substitute Bill:** The bill contains an emergency clause and takes effect on May 1, 2024.

**Staff Summary of Public Testimony:**

(In support) Although the Washington Supreme Court has ruled on several cases related to sentencing requirements for young adults convicted of Aggravated Murder in the first degree, there is currently no statutory guidance as to what the sentencing structure should be for that demographic. This bill specifically addresses the uncertainty around sentencing requirements for persons who commit Aggravated Murder in the first degree at age 18 to 20, by requiring the court to impose a minimum term of at least 30 years. This bill is a product of negotiations between prosecutors and defense attorneys.

(Opposed) The Washington Supreme Court's decision to allow resentencing for the age category addressed by this bill is stunning. Victims' families will have to endure the pain of resentencing. Many efforts are being made to rewrite state laws to lessen accountability and minimize the deaths of victims. Offenders with repeated offenses related to drugs should not be allowed to petition the Indeterminate Sentence Review Board for a considerable number of years because they have not shown rehabilitation. Continued drug infractions in prison should nullify the ability to petition. All offenders convicted of Aggravated Murder in the first degree committed before age 21 should bear the burden of proof in a court of law if they want to have their sentences reduced. An offender convicted of a serious crime must show lasting and obvious rehabilitation while incarcerated, no matter that offender's age. This bill should not be twisted to allow the release of unrehabilitated murderers back into the public.

(Other) It is important to hear and find balance. This bill should be amended so that an exceptional sentence may only be granted if the mitigating qualities of youth apply, which is more consistent with how other exceptional sentences are granted under the Sentencing Reform Act. If the mitigating qualities of youth do not apply, the default sentence should be life without the possibility of parole. Additionally, there should be a presumption against early release that the defendant must overcome by establishing successful rehabilitation. Anything less is inequitable to the victims and the people who are missing a member of their family at their dinner table.

The most serious offenses under state law deserve the most serious considerations before granting release, but this bill draws an arbitrary line for certain ages. Some of the people this bill would apply to have bad prison records and are a clear danger to society. There is hope that these people will clean themselves up, but it is disappointing that prisons are full of drugs.

**Persons Testifying:** (In support) Representative Roger Goodman, prime sponsor.

(Opposed) Richele Pogreba.

(Other) Russell Brown, Washington Association of Prosecuting Attorneys; Angela Franklin; and Douglas Franklin.

**Persons Signed In To Testify But Not Testifying:** None.