
HOUSE BILL 1343

State of Washington

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By Representatives Morris, Ballasiotes, Brough, Leonard, Heavey, Scott, G. Cole, R. Fisher, Kremen, Long, Rust, Carlson, Veloria, Dellwo, Karahalios, Wang, Grant, Jones, Wolfe, Franklin, Forner, Jacobsen, Appelwick, Campbell, H. Myers, Kessler, Springer, Miller, Locke, Roland, Valle, Basich, Wood, Quall, King, Johanson, Hansen, L. Johnson, Ogden, J. Kohl, Wineberry and Anderson

Read first time 01/25/93. Referred to Committee on Corrections.

1 AN ACT Relating to reducing the sentence of a person convicted of
2 murder who alleges that the murder was in response to the victim's
3 continuing pattern of physical or sexual abuse of the person or the
4 person's children; amending RCW 9.95.011 and 9.95.040; adding new
5 sections to chapter 9.95 RCW; adding a new section to chapter 9.94A
6 RCW; adding a new section to chapter 72.02 RCW; and declaring an
7 emergency.

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

9 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.95 RCW
10 to read as follows:

11 (1) An inmate convicted of murder may petition the indeterminate
12 sentence review board to review the inmate's sentence if the petition
13 alleges the following:

14 (a) The inmate was sentenced for a murder committed prior to July
15 23, 1989, which was the effective date of section 1, chapter 408, Laws
16 of 1989, as codified in RCW 9.94A.390(1)(h). RCW 9.94A.390(1)(h)
17 provides that the sentencing court may consider as a mitigating factor
18 evidence that the defendant or the defendant's children suffered a

1 continuing pattern of physical or sexual abuse by the victim of the
2 offense and the offense was a response to that abuse;

3 (b) RCW 9.94A.390(1)(h), if effective when the defendant committed
4 the crime, would have provided a basis for the defendant to seek a
5 mitigated sentence; and

6 (c) The sentencing court when determining what sentence to impose,
7 did not consider evidence that the victim subjected the defendant or
8 the defendant's children to a continuing pattern of sexual or physical
9 abuse and the murder was in response to that abuse.

10 (2) An inmate who seeks to have his or her sentence reviewed under
11 this section must petition the board for review no later than October
12 1, 1993. The petition may be by letter requesting review.

13 (3)(a) If the inmate was convicted of a murder committed prior to
14 July 1, 1984, and the inmate is under the jurisdiction of the
15 indeterminate sentence review board, the board shall conduct the review
16 as provided in section 2 of this act. If the inmate was sentenced
17 pursuant to chapter 9.94A RCW for a murder committed after June 30,
18 1984, but before July 23, 1989, the board shall conduct the review and
19 may make appropriate recommendations to the sentencing court as
20 provided in section 5 of this act. The board shall complete its review
21 of the petitions and submit recommendations to the sentencing courts or
22 their successors by October 1, 1994.

23 (b) When reviewing petitions, the board shall solicit
24 recommendations from the prosecuting attorneys of the counties where
25 the petitioners were convicted, and may accept imput from other
26 interested parties.

27 NEW SECTION. **Sec. 2.** A new section is added to chapter 9.95 RCW
28 to read as follows:

29 (1) If an inmate under the board's jurisdiction files a petition
30 for review under section 1 of this act, the board shall review the
31 duration of the inmate's confinement, including review of the minimum
32 term and parole eligibility review dates. The board shall consider
33 whether:

34 (a) The petitioner was convicted for a murder committed prior to
35 the effective date of RCW 9.94A.390(1)(h);

36 (b) RCW 9.94A.390(1)(h), if effective when the petitioner committed
37 the crime, would have provided a basis for the petitioner to seek a
38 mitigated sentence; and

1 (c) The sentencing court and prosecuting attorney, when making
2 their minimum term recommendations, considered evidence that the victim
3 subjected the petitioner or the petitioner's children to a continuing
4 pattern of sexual or physical abuse and the murder was in response to
5 that abuse.

6 (2) The board may reset the minimum term and parole eligibility
7 review date of a petitioner convicted of murder if the board finds that
8 had RCW 9.94A.390(1)(h) been effective when the petitioner committed
9 the crime, the petitioner may have received an exceptional mitigating
10 sentence.

11 **Sec. 3.** RCW 9.95.011 and 1986 c 224 s 7 are each amended to read
12 as follows:

13 When the court commits a convicted person to the department of
14 corrections on or after July 1, 1986, for an offense committed before
15 July 1, 1984, the court shall, at the time of sentencing or revocation
16 of probation, fix the minimum term. The term so fixed shall not exceed
17 the maximum sentence provided by law for the offense of which the
18 person is convicted.

19 The court shall attempt to set the minimum term reasonably
20 consistent with the purposes, standards, and sentencing ranges adopted
21 under RCW 9.94A.040, but the court is subject to the same limitations
22 as those placed on the board under RCW 9.92.090, 9.95.040 (1) through
23 (4), 9.95.115, 9A.32.040, 9A.44.045, and chapter 69.50 RCW. The
24 court's minimum term decision is subject to review to the same extent
25 as a minimum term decision by the parole board before July 1, 1986.

26 Thereafter, the expiration of the minimum term set by the court
27 minus any time credits earned under RCW 9.95.070 and 9.95.110
28 constitutes the parole eligibility review date, at which time the board
29 may consider the convicted person for parole under RCW 9.95.100 and
30 9.95.110 and chapter 72.04A RCW. Nothing in this section affects the
31 board's authority to reduce or increase the minimum term, once set by
32 the court, under RCW 9.95.040, 9.95.052, 9.95.055, 9.95.070, 9.95.080,
33 9.95.100, 9.95.115, (~~(or)~~) 9.95.125, or section 2 of this act.

34 **Sec. 4.** RCW 9.95.040 and 1992 c 7 s 24 are each amended to read as
35 follows:

36 The board shall fix the duration of confinement for persons
37 committed by the court before July 1, 1986, for crimes committed before

1 July 1, 1984. Within six months after the admission of the convicted
2 person to a state correctional facility, the board shall fix the
3 duration of confinement. The term of imprisonment so fixed shall not
4 exceed the maximum provided by law for the offense of which the person
5 was convicted or the maximum fixed by the court where the law does not
6 provide for a maximum term.

7 Subject to section 2 of this act, the following limitations are
8 placed on the board or the court for persons committed to a state
9 correctional facility on or after July 1, 1986, for crimes committed
10 before July 1, 1984, with regard to fixing the duration of confinement
11 in certain cases, notwithstanding any provisions of law specifying a
12 lesser sentence:

13 (1) For a person not previously convicted of a felony but armed
14 with a deadly weapon at the time of the commission of the offense, the
15 duration of confinement shall not be fixed at less than five years.

16 (2) For a person previously convicted of a felony either in this
17 state or elsewhere and who was armed with a deadly weapon at the time
18 of the commission of the offense, the duration of confinement shall not
19 be fixed at less than seven and one-half years.

20 The words "deadly weapon," as used in this section include, but are
21 not limited to, any instrument known as a blackjack, sling shot, billy,
22 sand club, sandbag, metal knuckles, any dirk, dagger, pistol, revolver,
23 or any other firearm, any knife having a blade longer than three
24 inches, any razor with an unguarded blade, any metal pipe or bar used
25 or intended to be used as a club, any explosive, and any weapon
26 containing poisonous or injurious gas.

27 (3) For a person convicted of being an habitual criminal within the
28 meaning of the statute which provides for mandatory life imprisonment
29 for such habitual criminals, the duration of confinement shall not be
30 fixed at less than fifteen years. The board shall retain jurisdiction
31 over such convicted person throughout the person's natural life unless
32 the governor by appropriate executive action orders otherwise.

33 (4) Any person convicted of embezzling funds from any institution
34 of public deposit of which the person was an officer or stockholder,
35 the duration of confinement shall be fixed at not less than five years.

36 Except when an inmate of a state correctional facility has been
37 convicted of murder in the first or second degree, the board may parole
38 an inmate prior to the expiration of a mandatory minimum term, provided
39 such inmate has demonstrated a meritorious effort in rehabilitation and

1 at least two-thirds of the board members concur in such action:
2 PROVIDED, That any inmate who has a mandatory minimum term and is
3 paroled prior to the expiration of such term according to the
4 provisions of this chapter shall not receive a conditional release from
5 supervision while on parole until after the mandatory minimum term has
6 expired.

7 NEW SECTION. **Sec. 5.** A new section is added to chapter 9.94A RCW
8 to read as follows:

9 (1) The sentencing court or the court's successor shall consider
10 recommendations from the indeterminate sentence review board for
11 resentencing defendants convicted of murder if the indeterminate
12 sentence review board advises the court of the following:

13 (a) The defendant was convicted for a murder committed prior to the
14 effective date of RCW 9.94A.390(1)(h);

15 (b) RCW 9.94A.390(1)(h), if effective when the defendant committed
16 the crime, would have provided a basis for the defendant to seek a
17 mitigated sentence; and

18 (c) Upon review of the sentence, the indeterminate sentence review
19 board believes that the sentencing court, when originally sentencing
20 the defendant for the murder, did not consider evidence that the victim
21 subjected the defendant or the defendant's children to a continuing
22 pattern of sexual or physical abuse and the murder was in response to
23 that abuse.

24 (2) The court may resentence the defendant in light of RCW
25 9.94A.390(1)(h) and impose an exceptional mitigating sentence pursuant
26 to that provision. Prior to resentencing, the court shall consider any
27 other recommendation and evidence concerning the issue of whether the
28 defendant committed the crime in response to abuse.

29 (3) The court shall render its decision regarding reducing the
30 inmate's sentence no later than six months after receipt of the
31 indeterminate sentence review board's recommendation to reduce the
32 sentence imposed.

33 NEW SECTION. **Sec. 6.** A new section is added to chapter 72.02 RCW
34 to read as follows:

35 The department shall advise all inmates in the department's custody
36 who were convicted of a murder that the inmate committed prior to July
37 23, 1989, about the provisions in sections 1, 2, and 5 of this act.

1 The department shall advise the inmates of the method and deadline for
2 submitting petitions to the indeterminate sentence review board for
3 review of the inmate's sentence. The department shall issue the notice
4 to the inmates no later than July 1, 1993.

5 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
6 preservation of the public peace, health, or safety, or support of the
7 state government and its existing public institutions, and shall take
8 effect immediately.

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