

SENATE BILL REPORT

SB 5839

As of February 10, 2015

Title: An act relating to technical corrections to processes for persons sentenced for offenses committed prior to reaching eighteen years of age.

Brief Description: Making technical corrections to processes for persons sentenced for offenses committed prior to reaching eighteen years of age.

Sponsors: Senators Darneille, O'Ban and Kohl-Welles; by request of Department of Corrections.

Brief History:

Committee Activity: Human Services, Mental Health & Housing: 2/10/15.

SENATE COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH & HOUSING

Staff: Lindsay Erickson (786-7465)

Background: In June of 2012, the United States Supreme Court held, in *Miller v. Alabama*, that the Eighth Amendment ban on cruel and unusual punishment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile homicide offenders. In 2013 the law was amended to comply with *Miller v. Alabama*. Second Substitute Senate Bill 5064 created a new sentencing scheme for juvenile offenders convicted of aggravated first degree murder and required that these juvenile offenders be sentenced to a 25-year minimum sentence if the youth committed the crime before age 16 or a minimum sentence between 25 years and life if the youth committed the crime at age 16 or 17. Life without parole is available within the discretion of the judge for youths who commit aggravated first degree murder at age 16 or 17. In setting a minimum term, the court must take into account mitigating factors as provided in *Miller v. Alabama*.

During the minimum term of total confinement, the person must not be eligible for community custody, earned release time, furlough, home detention, partial confinement, work crew, work release, any other form of early release, or any other form of authorized leave or absence from the correctional facility while not in the direct custody of a corrections officer. No later than 180 days prior to the expiration of the person's minimum sentence, the Department of Corrections (DOC) must conduct an examination of the offender to assist in predicting the dangerousness and likelihood that the offender will engage in future criminal behavior if released. The Indeterminate Sentence Review Board (ISRB) must order that the

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person be released unless it is determined by a preponderance of evidence that, despite conditions, it is more likely than not that the person will commit new criminal law violations if released. If the ISRB does not order that the person be released, a new minimum term not to exceed five years must be set for the person prior to future review. If an offender is released after serving the minimum term of confinement, the offender must be subject to community custody under the supervision of DOC and the authority of the ISRB for a period of time as determined by the ISRB.

Any person convicted of one or more crimes committed prior to the person's 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 subsequent to 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 first degree murder or a sex offense.

Summary of Bill: DOC must supervise any offender who is released by the ISRB and who was sentenced to community custody or subject to community custody under the terms of release.

DOC may release offenders from confinement when their release has been ordered by the ISRB, regardless of any mandatory sentencing enhancements for firearms, deadly weapons, and sexual motivation.

An offender convicted of aggravated first degree murder prior to the offender's eighteenth birthday may not earn early release time during the minimum term of confinement set by the court.

An offender released by the ISRB, pursuant to *Miller v. Alabama*, may be returned to confinement at the discretion of the ISRB. The ISRB must set a new minimum term of incarceration not to exceed five years.

An offender released by the ISRB, other than those convicted of aggravated first degree murder or a sex offense, may be returned to confinement at the discretion of the ISRB for up to the remainder of the court-imposed term of incarceration. The offender may file a new petition for release five years from the date of return to confinement or at an earlier date set by the ISRB.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: This is the technical follow-up to the *Miller v. Alabama* bill from last year – 2SSB 5064, which implemented the policy allowing persons who committed crimes under the age of 18 to seek release from the ISRB after serving a

portion of their sentence. This does not change the bill from last year, but rather adds cross-references that were missed in last year's bill.

OTHER: There is concern with two subsections of the bill relating to returning the offender to the institution at the discretion of the ISRB and the hearing that is provided if the person commits a community custody violation. A House amendment offered for the companion bill would address these concerns. But generally the technical changes contained in this bill still address the heart of the bill that was passed last year.

Persons Testifying: PRO: Tom McBride, WA Assn. of Prosecuting Attorneys; Anna Aylward, DOC.

OTHER: Nick Allen, Columbia Legal Services; Bob Cooper, WA Defender Assn.. WA Assn. of Criminal Defense Lawyers.