

HOUSE BILL 1344

State of Washington 67th Legislature 2021 Regular Session

By Representatives Hackney, Harris-Talley, Berry, Fitzgibbon, Simmons, Ramel, Walen, Morgan, Santos, Peterson, Davis, Ormsby, Bateman, Frame, and Pollet

Read first time 01/21/21. Referred to Committee on Public Safety.

1 AN ACT Relating to allowing qualifying persons serving long
2 sentences committed prior to reaching 25 years of age to seek review
3 for possible release from incarceration; amending RCW 9.94A.510,
4 9.94A.540, 9.94A.570, 9.94A.728, 9.94A.730, and 10.95.030; adding a
5 new section to chapter 10.95 RCW; and creating new sections.

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

7 Sec. 1. RCW 9.94A.510 and 2014 c 130 s 1 are each amended to
8 read as follows:

9 TABLE 1
10 Sentencing Grid

Table with columns: SERIOUSNESS, LEVEL, OFFENDER SCORE (0-8), 9 or more. Includes text: XVI Life sentence without parole/death penalty for offenders at or over the age of ((eighteen)) 25. For offenders under the age of ((eighteen)) 25, a term of ((twenty-five)) 25 years to life. XV 23y4m 24y4m 25y4m 26y4m 27y4m 28y4m 30y4m 32y10m36y 40y

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

1		IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
2			3-	6-	12+-	13-	15-	22-	33-	43-	53-	63-
3			9	12	14	17	20	29	43	57	70	84
4		III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
5			1-	3-	4-	9-	12+-	17-	22-	33-	43-	51-
6			3	8	12	12	16	22	29	43	57	68
7		II		4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m
8			0-90	2-	3-	4-	12+-	14-	17-	22-	33-	43-
9			Days	6	9	12	14	18	22	29	43	57
10		I			3m	4m	5m	8m	13m	16m	20m	2y2m
11			0-60	0-90	2-	2-	3-	4-	12+-	14-	17-	22-
12			Days	Days	5	6	8	12	14	18	22	29

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

17 **Sec. 2.** RCW 9.94A.540 and 2014 c 130 s 2 are each amended to  
18 read as follows:

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

22 (a) An offender convicted of the crime of murder in the first  
23 degree shall be sentenced to a term of total confinement not less  
24 than (~~twenty~~) 20 years.

25 (b) An offender convicted of the crime of assault in the first  
26 degree or assault of a child in the first degree where the offender  
27 used force or means likely to result in death or intended to kill the  
28 victim shall be sentenced to a term of total confinement not less  
29 than five years.

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

33 (d) An offender convicted of the crime of sexually violent  
34 predator escape shall be sentenced to a minimum term of total  
35 confinement not less than (~~sixty~~) 60 months.

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

5 (2) During such minimum terms of total confinement, no offender  
6 subject to the provisions of this section is eligible for community  
7 custody, earned release time, furlough, home detention, partial  
8 confinement, work crew, work release, or any other form of early  
9 release authorized under RCW 9.94A.728, or any other form of  
10 authorized leave of absence from the correctional facility while not  
11 in the direct custody of a corrections officer. The provisions of  
12 this subsection shall not apply: (a) In the case of an offender in  
13 need of emergency medical treatment; (b) for the purpose of  
14 commitment to an inpatient treatment facility in the case of an  
15 offender convicted of the crime of rape in the first degree; (~~or~~)  
16 (c) for an extraordinary medical placement when authorized under RCW  
17 9.94A.728(~~(+3)~~) (1) (c); or (d) for release approved by the board  
18 under RCW 9.94A.730.

19 (3) (a) Subsection (1) (a) through (d) of this section shall not be  
20 applied in sentencing of juveniles tried as adults pursuant to RCW  
21 13.04.030(1) (e) (i).

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

24 **Sec. 3.** RCW 9.94A.570 and 2000 c 28 s 6 are each amended to read  
25 as follows:

26 (1) Notwithstanding the statutory maximum sentence or any other  
27 provision of this chapter, a persistent offender shall be sentenced  
28 to a term of total confinement for life without the possibility of  
29 release or, when authorized by RCW 10.95.030 for the crime of  
30 aggravated murder in the first degree, sentenced to death. (~~In~~  
31 ~~addition, no offender subject to this section may be)~~)

32 (2) A persistent offender is not eligible for community custody,  
33 earned release time, furlough, home detention, partial confinement,  
34 work crew, work release, or any other form of release as defined  
35 under RCW 9.94A.728(1) (~~(, (2), (3), (4), (6), (8), or (9))~~) (b), (c),  
36 (e), (h), and (i), or any other form of authorized leave from a  
37 correctional facility while not in the direct custody of a  
38 corrections officer or officers, except: (1) In the case of an  
39 offender in need of emergency medical treatment; or (2) for the

1 purpose of commitment to an inpatient treatment facility in the case  
2 of an offender convicted of the crime of rape in the first degree.

3 (3) A persistent offender may be released from confinement by the  
4 board under RCW 9.94A.730 or 10.95.030(3).

5 **Sec. 4.** RCW 9.94A.728 and 2018 c 166 s 2 are each amended to  
6 read as follows:

7 (1) No person serving a sentence imposed pursuant to this chapter  
8 and committed to the custody of the department shall leave the  
9 confines of the correctional facility or be released prior to the  
10 expiration of the sentence except as follows:

11 (a) An offender may earn early release time as authorized by RCW  
12 9.94A.729;

13 (b) An offender may leave a correctional facility pursuant to an  
14 authorized furlough or leave of absence. In addition, offenders may  
15 leave a correctional facility when in the custody of a corrections  
16 officer or officers;

17 (c)(i) The secretary may authorize an extraordinary medical  
18 placement for an offender when all of the following conditions exist:

19 (A) The offender has a medical condition that is serious and is  
20 expected to require costly care or treatment;

21 (B) The offender poses a low risk to the community because he or  
22 she is currently physically incapacitated due to age or the medical  
23 condition or is expected to be so at the time of release; and

24 (C) It is expected that granting the extraordinary medical  
25 placement will result in a cost savings to the state.

26 (ii) An offender sentenced to death or to life imprisonment  
27 without the possibility of release or parole is not eligible for an  
28 extraordinary medical placement.

29 (iii) The secretary shall require electronic monitoring for all  
30 offenders in extraordinary medical placement unless the electronic  
31 monitoring equipment interferes with the function of the offender's  
32 medical equipment or results in the loss of funding for the  
33 offender's medical care, in which case, an alternative type of  
34 monitoring shall be utilized. The secretary shall specify who shall  
35 provide the monitoring services and the terms under which the  
36 monitoring shall be performed.

37 (iv) The secretary may revoke an extraordinary medical placement  
38 under this subsection (1)(c) at any time.

1 (v) Persistent offenders are not eligible for extraordinary  
2 medical placement;

3 (d) The governor, upon recommendation from the clemency and  
4 pardons board, may grant an extraordinary release for reasons of  
5 serious health problems, senility, advanced age, extraordinary  
6 meritorious acts, or other extraordinary circumstances;

7 (e) No more than the final (~~twelve~~) 12 months of the offender's  
8 term of confinement may be served in partial confinement for aiding  
9 the offender with: Finding work as part of the work release program  
10 under chapter 72.65 RCW; or reestablishing himself or herself in the  
11 community as part of the parenting program in RCW 9.94A.6551. This is  
12 in addition to that period of earned early release time that may be  
13 exchanged for partial confinement pursuant to RCW 9.94A.729(5)(d);

14 (f) No more than the final six months of the offender's term of  
15 confinement may be served in partial confinement as home detention as  
16 part of the graduated reentry program developed by the department  
17 under RCW 9.94A.733;

18 (g) The governor may pardon any offender;

19 (h) The department may release an offender from confinement any  
20 time within (~~ten~~) 10 days before a release date calculated under  
21 this section;

22 (i) An offender may leave a correctional facility prior to  
23 completion of his or her sentence if the sentence has been reduced as  
24 provided in RCW 9.94A.870;

25 (j) Notwithstanding any other provisions of this section, an  
26 offender sentenced for a felony crime listed in RCW 9.94A.540 as  
27 subject to a mandatory minimum sentence of total confinement shall  
28 not be released from total confinement before the completion of the  
29 listed mandatory minimum sentence for that felony crime of conviction  
30 unless allowed under RCW 9.94A.540; and

31 (k) Any person convicted of one or more crimes committed prior to  
32 the person's (~~eighteenth~~) 25th birthday may be released from  
33 confinement pursuant to RCW 9.94A.730.

34 (2) Offenders residing in a juvenile correctional facility  
35 placement pursuant to RCW 72.01.410(1)(a) are not subject to the  
36 limitations in this section.

37 **Sec. 5.** RCW 9.94A.730 and 2015 c 134 s 6 are each amended to  
38 read as follows:

1 (1) Notwithstanding any other provision of this chapter, any  
2 person convicted of one or more crimes committed prior to the  
3 person's (~~eighteenth~~) 25th birthday may petition the indeterminate  
4 sentence review board for early release after serving no less than  
5 (~~twenty~~) 15 years of total confinement, provided the person has not  
6 been convicted for any crime committed subsequent to the person's  
7 (~~eighteenth~~) 25th birthday, the person has not committed a  
8 disqualifying serious infraction as defined by the department in the  
9 (~~twelve~~) 12 months prior to filing the petition for early release,  
10 and the current sentence was not imposed under RCW 10.95.030 or  
11 9.94A.507.

12 (2) No later than five years prior to the date the offender will  
13 be eligible to petition for release, the department shall conduct an  
14 assessment of the offender and identify programming and services that  
15 would be appropriate to prepare the offender for return to the  
16 community. To the extent possible, the department shall make  
17 programming available as identified by the assessment.

18 (3) No later than (~~one hundred eighty~~) 180 days from receipt of  
19 the petition for early release, the department shall conduct, and the  
20 offender shall participate in, an examination of the person,  
21 incorporating methodologies that are recognized by experts in the  
22 prediction of dangerousness, and including a prediction of the  
23 probability that the person will engage in future criminal behavior  
24 if released on conditions to be set by the board. The board may  
25 consider a person's failure to participate in an evaluation under  
26 this subsection in determining whether to release the person. The  
27 board shall order the person released under such affirmative and  
28 other conditions as the board determines appropriate, unless the  
29 board determines by a preponderance of the evidence that, despite  
30 such conditions, it is more likely than not that the person will  
31 commit new criminal law violations if released. The board shall give  
32 public safety considerations the highest priority when making all  
33 discretionary decisions regarding the ability for release and  
34 conditions of release.

35 (4) In a hearing conducted under subsection (3) of this section,  
36 the board shall provide opportunities for victims and survivors of  
37 victims of any crimes for which the offender has been convicted to  
38 present statements as set forth in RCW 7.69.032. The procedures for  
39 victim and survivor of victim input shall be provided by rule. To  
40 facilitate victim and survivor of victim involvement, county

1 prosecutor's offices shall ensure that any victim impact statements  
2 and known contact information for victims of record and survivors of  
3 victims are forwarded as part of the judgment and sentence.

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

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

15 (7) An offender released under the provisions of this section may  
16 be returned to the institution at the discretion of the board if the  
17 offender is found to have violated a condition of community custody.  
18 The offender is entitled to a hearing pursuant to RCW 9.95.435. If  
19 the board finds that the offender has committed a new violation, the  
20 board may return the offender to the institution for up to the  
21 remainder of the court-imposed term of incarceration. The offender  
22 may file a new petition for release five years from the date of  
23 return to the institution or at an earlier date as may be set by the  
24 board.

25 **Sec. 6.** RCW 10.95.030 and 2015 c 134 s 5 are each amended to  
26 read as follows:

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

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

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

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

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

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

29 (e) "Developmental period" means the period of time between  
30 conception and the ~~((eighteenth))~~ 18th birthday.

31 (3) (a) ~~((i))~~ Any person convicted of the crime of aggravated  
32 first degree murder for an offense committed prior to the person's  
33 ~~((sixteenth))~~ 25th birthday shall be sentenced to a maximum term of  
34 life imprisonment and a minimum term of total confinement of  
35 ~~((twenty-five))~~ 25 years.

36 ~~((ii) Any person convicted of the crime of aggravated first  
37 degree murder for an offense committed when the person is at least  
38 sixteen years old but less than eighteen years old shall be sentenced  
39 to a maximum term of life imprisonment and a minimum term of total  
40 confinement of no less than twenty-five years. A minimum term of life~~

1 ~~may be imposed, in which case the person will be ineligible for~~  
2 ~~parole or early release.~~

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

10 ~~(e))~~ (b) A person sentenced under this subsection shall serve  
11 the sentence in a facility or institution operated, or utilized under  
12 contract, by the state. During the minimum term of total confinement,  
13 the person shall not be eligible for community custody, earned  
14 release time, furlough, home detention, partial confinement, work  
15 crew, work release, or any other form of early release authorized  
16 under RCW 9.94A.728, or any other form of authorized leave or absence  
17 from the correctional facility while not in the direct custody of a  
18 corrections officer. The provisions of this subsection shall not  
19 apply: (i) In the case of an offender in need of emergency medical  
20 treatment; or (ii) for an extraordinary medical placement when  
21 authorized under RCW 9.94A.728 ~~((3))~~ (1)(c).

22 ~~((d))~~ (c) Any person sentenced pursuant to this subsection  
23 shall be subject to community custody under the supervision of the  
24 department of corrections and the authority of the indeterminate  
25 sentence review board. As part of any sentence under this subsection,  
26 the court shall require the person to comply with any conditions  
27 imposed by the board.

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

34 ~~((f))~~ (e) No later than ~~((one hundred eighty))~~ 180 days prior  
35 to the expiration of the person's minimum term, the department of  
36 corrections shall conduct, and the offender shall participate in, an  
37 examination of the person, incorporating methodologies that are  
38 recognized by experts in the prediction of dangerousness, and  
39 including a prediction of the probability that the person will engage  
40 in future criminal behavior if released on conditions to be set by

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

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

23 ~~((h))~~ (g) An offender released by the board is subject to the  
24 supervision of the department of corrections for a period of time to  
25 be determined by the board. The department shall monitor the  
26 offender's compliance with conditions of community custody imposed by  
27 the court or board and promptly report any violations to the board.  
28 Any violation of conditions of community custody established or  
29 modified by the board are subject to the provisions of RCW 9.95.425  
30 through 9.95.440.

31 ~~((i))~~ (h) An offender released or discharged under this section  
32 may be returned to the institution at the discretion of the board if  
33 the offender is found to have violated a condition of community  
34 custody. The offender is entitled to a hearing pursuant to RCW  
35 9.95.435. The board shall set a new minimum term of incarceration not  
36 to exceed five years.

37 NEW SECTION. **Sec. 7.** A new section is added to chapter 10.95  
38 RCW to read as follows:

1 (1) A person, who was sentenced prior to the effective date of  
2 this section, under this chapter or any prior law, to a term of life  
3 without the possibility of parole for an offense committed on or  
4 after his or her 16th birthday and prior to his or her 25th birthday,  
5 shall be returned to the sentencing court or the sentencing court's  
6 successor for sentencing consistent with RCW 10.95.030. Release and  
7 supervision of a person resentenced under this section is governed by  
8 RCW 10.95.030.

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

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

15 (4) A resentencing under this section shall not reopen the  
16 defendant's conviction to challenges that would otherwise be barred  
17 by RCW 10.73.090, 10.73.100, 10.73.140, or other procedural barriers.

18 NEW SECTION. **Sec. 8.** This act applies retroactively to persons  
19 incarcerated on the effective date of this section, regardless of the  
20 date of the offense or conviction.

21 NEW SECTION. **Sec. 9.** This act does not create any right or  
22 entitlement to release from incarceration before the end of a term of  
23 incarceration imposed by the court.

--- END ---