
**Community Safety, Justice, & Reentry
Committee**

HB 1396

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

Sponsors: Representatives Goodman and Bateman.

Brief Summary of Bill

- Eliminates the provision authorizing the sentence of life imprisonment without parole for Aggravated Murder in the first degree where the perpetrator committed the crime at age 16 to 17.
- Requires the sentencing court to impose a maximum term of life imprisonment and a minimum term of total confinement of 25 years for Aggravated Murder in the first degree where the perpetrator committed the crime at age 16 to 17.
- 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 justify a downward departure, and requires the sentencing court to instead impose life imprisonment without parole if the court determines that such factors do not justify a downward departure.
- Requires resentencing for persons currently serving a sentence of life imprisonment without parole for an offense committed at age 18 to 20.

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.

Hearing Date: 1/23/23

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 person's age, the person's childhood and life experience, the degree of responsibility the person was capable of exercising, and the person's chances of becoming rehabilitated.

State law contains a statutory provision that authorizes a court to impose a sentence of life imprisonment without parole for Aggravated Murder in the first degree committed at age 16 or 17. However, in 2018 the Washington Supreme Court held, in *State v. Bassett*, that life imprisonment without parole constitutes cruel punishment in violation of Article 1, section 14 of the state Constitution as applied to certain youthful offenders.

Age 18 to 20. A person who commits Aggravated Murder in the first degree at age 18 to 20 must be sentenced to a maximum term of life imprisonment and a minimum term of total confinement of no less than 25 years. In setting a minimum term, the court must take into account the *Miller* mitigating factors.

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.

Indeterminant 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.

Summary of Bill:

Statutory provisions related to sentencing requirements for Aggravated Murder in the first degree are modified. The sentence that must be imposed for Aggravated Murder in the first degree, based on the age of the perpetrator at the time the crime was committed, is adjusted as follows:

- If the crime was committed by the perpetrator at age 16 to 17, the court must impose a maximum term of life imprisonment and a minimum term of total confinement of 25 years; and
- If the crime was committed by the perpetrator 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 *State v. Miller* justify a downward departure. However, if the court determines that those mitigating factors do not justify a downward departure, the court must instead impose life imprisonment without parole.

A person who was sentenced prior to July 1, 2023, 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.

Appropriation: None.

Fiscal Note: Requested on January 18, 2023.

Effective Date: The bill takes effect on July 1, 2023.