

HOUSE BILL 1396

State of Washington

68th Legislature

2023 Regular Session

By Representatives Goodman and Bateman

Read first time 01/18/23. Referred to Committee on Community Safety, Justice, & Reentry.

1 AN ACT Relating to persons sentenced for aggravated first degree  
2 murder committed prior to reaching 21 years of age; amending RCW  
3 9.94A.510, 9.94A.540, 9.94A.6332, 9.94A.729, and 10.95.030; adding  
4 new sections to chapter 10.95 RCW; providing an effective date; and  
5 declaring an emergency.

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

SERIOUSNESS		OFFENDER SCORE									
LEVEL		0	1	2	3	4	5	6	7	8	9 or more
XVI ((Life sentence without parole/death penalty for offenders at or over the age of eighteen. For offenders under the age of eighteen, a term of twenty-five years to life)) Sentence established by RCW 10.95.030.											
XV		23y4m	24y4m	25y4m	26y4m	27y4m	28y4m	30y4m	32y10m	36y	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 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 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~~) 21st birthday shall be sentenced to a term of total  
4 confinement not less than twenty-five 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 (c)  
16 for an extraordinary medical placement when authorized under RCW  
17 9.94A.728(~~(+3)~~) (1)(c).

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

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

23 **Sec. 3.** RCW 9.94A.6332 and 2021 c 242 s 5 are each amended to  
24 read as follows:

25 The procedure for imposing sanctions for violations of sentence  
26 conditions or requirements is as follows:

27 (1) If the offender was sentenced under the drug offender  
28 sentencing alternative, any sanctions shall be imposed by the  
29 department or the court pursuant to RCW 9.94A.660.

30 (2) If the offender was sentenced under the special sex offender  
31 sentencing alternative, any sanctions shall be imposed by the  
32 department or the court pursuant to RCW 9.94A.670.

33 (3) If the offender was sentenced under the parenting sentencing  
34 alternative, any sanctions shall be imposed by the department or by  
35 the court pursuant to RCW 9.94A.655.

36 (4) If the offender was sentenced under the mental health  
37 sentencing alternative, any sanctions shall be imposed by the  
38 department or the court pursuant to RCW 9.94A.695.

1 (5) If a sex offender was sentenced pursuant to RCW 9.94A.507,  
2 any sanctions shall be imposed by the board pursuant to RCW 9.95.435.

3 (6) If the offender was released pursuant to RCW 9.94A.730, any  
4 sanctions shall be imposed by the board pursuant to RCW 9.95.435.

5 (7) If the offender was sentenced pursuant to RCW 10.95.030(3),  
6 section 6 of this act, or 10.95.035, any sanctions shall be imposed  
7 by the board pursuant to RCW 9.95.435.

8 (8) In any other case, if the offender is being supervised by the  
9 department, any sanctions shall be imposed by the department pursuant  
10 to RCW 9.94A.737. If a probationer is being supervised by the  
11 department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, upon  
12 receipt of a violation hearing report from the department, the court  
13 retains any authority that those statutes provide to respond to a  
14 probationer's violation of conditions.

15 (9) If the offender is not being supervised by the department,  
16 any sanctions shall be imposed by the court pursuant to RCW  
17 9.94A.6333.

18 **Sec. 4.** RCW 9.94A.729 and 2022 c 29 s 1 are each amended to read  
19 as follows:

20 (1)(a) The term of the sentence of an offender committed to a  
21 correctional facility operated by the department may be reduced by  
22 earned release time in accordance with procedures that shall be  
23 developed and adopted by the correctional agency having jurisdiction  
24 in which the offender is confined. The earned release time shall be  
25 for good behavior and good performance, as determined by the  
26 correctional agency having jurisdiction. The correctional agency  
27 shall not credit the offender with earned release credits in advance  
28 of the offender actually earning the credits.

29 (b) Any program established pursuant to this section shall allow  
30 an offender to earn early release credits for presentence  
31 incarceration. If an offender is transferred from a county jail to  
32 the department, the administrator of a county jail facility shall  
33 certify to the department the amount of time spent in custody at the  
34 facility and the number of days of early release credits lost or not  
35 earned. The department may approve a jail certification from a  
36 correctional agency that calculates early release time based on the  
37 actual amount of confinement time served by the offender before  
38 sentencing when an erroneous calculation of confinement time served  
39 by the offender before sentencing appears on the judgment and

1 sentence. The department must adjust an offender's rate of early  
2 release listed on the jail certification to be consistent with the  
3 rate applicable to offenders in the department's facilities. However,  
4 the department is not authorized to adjust the number of presentence  
5 early release days that the jail has certified as lost or not earned.

6 (2) (a) An offender who has been convicted of a felony committed  
7 after July 23, 1995, that involves any applicable deadly weapon  
8 enhancements under RCW 9.94A.533 (3) or (4), or both, shall not  
9 receive any good time credits or earned release time for that portion  
10 of his or her sentence that results from any deadly weapon  
11 enhancements.

12 (b) An offender whose sentence includes any impaired driving  
13 enhancements under RCW 9.94A.533(7), minor child enhancements under  
14 RCW 9.94A.533(13), or both, shall not receive any good time credits  
15 or earned release time for any portion of his or her sentence that  
16 results from those enhancements.

17 (3) An offender may earn early release time as follows:

18 (a) In the case of an offender sentenced pursuant to RCW  
19 10.95.030(3), section 6 of this act, or 10.95.035, the offender may  
20 not receive any earned early release time during the minimum term of  
21 confinement imposed by the court; for any remaining portion of the  
22 sentence served by the offender, the aggregate earned release time  
23 may not exceed 10 percent of the sentence.

24 (b) In the case of an offender convicted of a serious violent  
25 offense, or a sex offense that is a class A felony, committed on or  
26 after July 1, 1990, and before July 1, 2003, the aggregate earned  
27 release time may not exceed 15 percent of the sentence.

28 (c) In the case of an offender convicted of a serious violent  
29 offense, or a sex offense that is a class A felony, committed on or  
30 after July 1, 2003, the aggregate earned release time may not exceed  
31 10 percent of the sentence.

32 (d) An offender is qualified to earn up to 50 percent of  
33 aggregate earned release time if he or she:

34 (i) Is not classified as an offender who is at a high risk to  
35 reoffend as provided in subsection (4) of this section;

36 (ii) Is not confined pursuant to a sentence for:

37 (A) A sex offense;

38 (B) A violent offense;

39 (C) A crime against persons as defined in RCW 9.94A.411;

1 (D) A felony that is domestic violence as defined in RCW  
2 10.99.020;

3 (E) A violation of RCW 9A.52.025 (residential burglary);

4 (F) A violation of, or an attempt, solicitation, or conspiracy to  
5 violate, RCW 69.50.401 by manufacture or delivery or possession with  
6 intent to deliver methamphetamine; or

7 (G) A violation of, or an attempt, solicitation, or conspiracy to  
8 violate, RCW 69.50.406 (delivery of a controlled substance to a  
9 minor);

10 (iii) Has no prior conviction for the offenses listed in (d)(ii)  
11 of this subsection;

12 (iv) Participates in programming or activities as directed by the  
13 offender's individual reentry plan as provided under RCW 72.09.270 to  
14 the extent that such programming or activities are made available by  
15 the department; and

16 (v) Has not committed a new felony after July 22, 2007, while  
17 under community custody.

18 (e) In no other case shall the aggregate earned release time  
19 exceed one-third of the total sentence.

20 (4) The department shall perform a risk assessment of each  
21 offender who may qualify for earned early release under subsection  
22 (3)(d) of this section utilizing the risk assessment tool recommended  
23 by the Washington state institute for public policy. Subsection  
24 (3)(d) of this section does not apply to offenders convicted after  
25 July 1, 2010.

26 (5)(a) A person who is eligible for earned early release as  
27 provided in this section and who will be supervised by the department  
28 pursuant to RCW 9.94A.501 or 9.94A.5011, shall be transferred to  
29 community custody in lieu of earned release time;

30 (b) The department shall, as a part of its program for release to  
31 the community in lieu of earned release, require the offender to  
32 propose a release plan that includes an approved residence and living  
33 arrangement. All offenders with community custody terms eligible for  
34 release to community custody in lieu of earned release shall provide  
35 an approved residence and living arrangement prior to release to the  
36 community;

37 (c) The department may deny transfer to community custody in lieu  
38 of earned release time if the department determines an offender's  
39 release plan, including proposed residence location and living  
40 arrangements, may violate the conditions of the sentence or

1 conditions of supervision, place the offender at risk to violate the  
2 conditions of the sentence, place the offender at risk to reoffend,  
3 or present a risk to victim safety or community safety. The  
4 department's authority under this section is independent of any  
5 court-ordered condition of sentence or statutory provision regarding  
6 conditions for community custody;

7 (d) If the department is unable to approve the offender's release  
8 plan, the department may do one or more of the following:

9 (i) Transfer an offender to partial confinement in lieu of earned  
10 early release for a period not to exceed three months. The three  
11 months in partial confinement is in addition to that portion of the  
12 offender's term of confinement that may be served in partial  
13 confinement as provided in RCW 9.94A.728(1)(e);

14 (ii) Provide rental vouchers to the offender for a period not to  
15 exceed six months if rental assistance will result in an approved  
16 release plan.

17 A voucher must be provided in conjunction with additional  
18 transition support programming or services that enable an offender to  
19 participate in services including, but not limited to, substance  
20 abuse treatment, mental health treatment, sex offender treatment,  
21 educational programming, or employment programming;

22 (e) The department shall maintain a list of housing providers  
23 that meets the requirements of RCW 72.09.285. If more than two  
24 voucher recipients will be residing per dwelling unit, as defined in  
25 RCW 59.18.030, rental vouchers for those recipients may only be paid  
26 to a housing provider on the department's list;

27 (f) For each offender who is the recipient of a rental voucher,  
28 the department shall gather data as recommended by the Washington  
29 state institute for public policy in order to best demonstrate  
30 whether rental vouchers are effective in reducing recidivism.

31 (6) An offender serving a term of confinement imposed under RCW  
32 9.94A.670(5)(a) is not eligible for earned release credits under this  
33 section.

34 **Sec. 5.** RCW 10.95.030 and 2015 c 134 s 5 are each amended to  
35 read as follows:

36 (1) Except as provided in subsections (2) and (3) of this  
37 section, any person convicted of the crime of aggravated first degree  
38 murder shall be sentenced to life imprisonment without possibility of  
39 release or parole. A person sentenced to life imprisonment under this



1 section shall not have that sentence suspended, deferred, or commuted  
2 by any judicial officer and the indeterminate sentence review board  
3 or its successor may not parole such prisoner nor reduce the period  
4 of confinement in any manner whatsoever including but not limited to  
5 any sort of good-time calculation. The department of social and  
6 health services or its successor or any executive official may not  
7 permit such prisoner to participate in any sort of release or  
8 furlough program.

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

22 (a) "Intellectual disability" means the individual has: (i)  
23 Significantly subaverage general intellectual functioning; (ii)  
24 existing concurrently with deficits in adaptive behavior; and (iii)  
25 both significantly subaverage general intellectual functioning and  
26 deficits in adaptive behavior were manifested during the  
27 developmental period.

28 (b) "General intellectual functioning" means the results obtained  
29 by assessment with one or more of the individually administered  
30 general intelligence tests developed for the purpose of assessing  
31 intellectual functioning.

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

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

37 (e) "Developmental period" means the period of time between  
38 conception and the eighteenth birthday.

39 (3) (a) (i) Any person convicted of the crime of aggravated first  
40 degree murder for an offense committed prior to the person's

1 (~~sixteenth~~) 18th birthday shall be sentenced to a maximum term of  
2 life imprisonment and a minimum term of total confinement of twenty-  
3 five years.

4 (ii) Any person convicted of the crime of aggravated first degree  
5 murder for an offense committed when the person is at least  
6 (~~sixteen~~) 18 years old but less than (~~eighteen~~) 21 years old  
7 shall be sentenced to a maximum term of life imprisonment and a  
8 minimum term of total confinement of no less than (~~twenty-five~~) 25  
9 years if the court determines that the mitigating factors that  
10 account for the diminished culpability of youth, as described in (b)  
11 of this subsection, justify a downward departure; however, if the  
12 court determines that those mitigating factors do not justify a  
13 downward departure, the person shall instead be sentenced to life  
14 imprisonment without the possibility of release or parole. ((A  
15 minimum term of life may be imposed, in which case the person will be  
16 ineligible for parole or early release.))

17 (b) In setting a minimum term, the court must take into account  
18 mitigating factors that account for the diminished culpability of  
19 youth as provided in *Miller v. Alabama*, 132 S.Ct. 2455 (2012)  
20 including, but not limited to, the age of the individual, the youth's  
21 childhood and life experience, the degree of responsibility the youth  
22 was capable of exercising, and the youth's chances of becoming  
23 rehabilitated.

24 (c) A person sentenced under this subsection shall serve the  
25 sentence in a facility or institution operated, or utilized under  
26 contract, by the state. During the minimum term of total confinement,  
27 the person shall not be eligible for community custody, earned  
28 release time, furlough, home detention, partial confinement, work  
29 crew, work release, or any other form of early release authorized  
30 under RCW 9.94A.728, or any other form of authorized leave or absence  
31 from the correctional facility while not in the direct custody of a  
32 corrections officer. The provisions of this subsection shall not  
33 apply: (i) In the case of an offender in need of emergency medical  
34 treatment; or (ii) for an extraordinary medical placement when  
35 authorized under RCW 9.94A.728(~~(3)~~) (1)(c).

36 (d) Any person sentenced pursuant to this subsection shall be  
37 subject to community custody under the supervision of the department  
38 of corrections and the authority of the indeterminate sentence review  
39 board. As part of any sentence under this subsection, the court shall

1 require the person to comply with any conditions imposed by the  
2 board.

3 (e) No later than five years prior to the expiration of the  
4 person's minimum term, the department of corrections shall conduct an  
5 assessment of the offender and identify programming and services that  
6 would be appropriate to prepare the offender for return to the  
7 community. To the extent possible, the department shall make  
8 programming available as identified by the assessment.

9 (f) No later than one hundred eighty days prior to the expiration  
10 of the person's minimum term, the department of corrections shall  
11 conduct, and the offender shall participate in, an examination of the  
12 person, incorporating methodologies that are recognized by experts in  
13 the prediction of dangerousness, and including a prediction of the  
14 probability that the person will engage in future criminal behavior  
15 if released on conditions to be set by the board. The board may  
16 consider a person's failure to participate in an evaluation under  
17 this subsection in determining whether to release the person. The  
18 board shall order the person released, under such affirmative and  
19 other conditions as the board determines appropriate, unless the  
20 board determines by a preponderance of the evidence that, despite  
21 such conditions, it is more likely than not that the person will  
22 commit new criminal law violations if released. If the board does not  
23 order the person released, the board shall set a new minimum term not  
24 to exceed five additional years. The board shall give public safety  
25 considerations the highest priority when making all discretionary  
26 decisions regarding the ability for release and conditions of  
27 release.

28 (g) In a hearing conducted under (f) of this subsection, the  
29 board shall provide opportunities for victims and survivors of  
30 victims of any crimes for which the offender has been convicted to  
31 present statements as set forth in RCW 7.69.032. The procedures for  
32 victim and survivor of victim input shall be provided by rule. To  
33 facilitate victim and survivor of victim involvement, county  
34 prosecutor's offices shall ensure that any victim impact statements  
35 and known contact information for victims of record and survivors of  
36 victims are forwarded as part of the judgment and sentence.

37 (h) An offender released by the board is subject to the  
38 supervision of the department of corrections for a period of time to  
39 be determined by the board. The department shall monitor the  
40 offender's compliance with conditions of community custody imposed by

1 the court or board and promptly report any violations to the board.  
2 Any violation of conditions of community custody established or  
3 modified by the board are subject to the provisions of RCW 9.95.425  
4 through 9.95.440.

5 (i) An offender released or discharged under this section may be  
6 returned to the institution at the discretion of the board if the  
7 offender is found to have violated a condition of community custody.  
8 The offender is entitled to a hearing pursuant to RCW 9.95.435. The  
9 board shall set a new minimum term of incarceration not to exceed  
10 five years.

11 NEW SECTION. **Sec. 6.** A new section is added to chapter 10.95  
12 RCW to read as follows:

13 (1) A person, who was sentenced prior to July 1, 2023, under this  
14 chapter or any prior law, to a term of life without the possibility  
15 of parole for an offense committed when the person is at least 18  
16 years old but less than 21 years old, shall be returned to the  
17 sentencing court or the sentencing court's successor for sentencing  
18 consistent with RCW 10.95.030. Release and supervision of a person  
19 who receives a minimum term of less than life will be governed by RCW  
20 10.95.030.

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

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

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

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

32 Sections 1 through 6 of this act apply to all sentencing hearings  
33 conducted on or after July 1, 2023, regardless of the date of an  
34 offender's underlying offense.

35 NEW SECTION. **Sec. 8.** If any provision of this act or its  
36 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 9.** This act is necessary for the immediate  
4 preservation of the public peace, health, or safety, or support of  
5 the state government and its existing public institutions, and takes  
6 effect July 1, 2023.

--- END ---