

HOUSE BILL 1344

State of Washington

67th Legislature

2021 Regular Session

By Representatives Hackney and Harris-Talley

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:

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

TABLE 1
Sentencing Grid

SERIOUSNESS

LEVEL

OFFENDER SCORE

9 or

0 1 2 3 4 5 6 7 8 more

71. 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

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

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

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

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

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

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

(d) An offender convicted of the crime of sexually violent predator escape shall be sentenced to a minimum term of total 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.

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