
SECOND SUBSTITUTE HOUSE BILL 1338

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By House Appropriations Subcommittee on General Government (originally sponsored by Representatives Roberts, Moscoso, Pettigrew, Pedersen, Clibborn, Wylie, Jenkins, Kagi, Hunt, Springer, Farrell, Appleton, McCoy, Walsh, Moeller, Santos, and Freeman)

READ FIRST TIME 02/25/13.

1 AN ACT Relating to juveniles sentenced to long terms of
2 incarceration; amending RCW 9.94A.540, 9.94A.6332, 9.94A.729, 9.95.425,
3 9.95.430, 9.95.435, 9.95.440, and 10.95.030; adding a new section to
4 chapter 9.94A RCW; adding a new section to chapter 10.95 RCW;
5 prescribing penalties; providing an effective date; and declaring an
6 emergency.

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

8 **Sec. 1.** RCW 9.94A.540 and 2005 c 437 s 2 are each amended to read
9 as follows:

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

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

16 (b) An offender convicted of the crime of assault in the first
17 degree or assault of a child in the first degree where the offender
18 used force or means likely to result in death or intended to kill the

1 victim shall be sentenced to a term of total confinement not less than
2 five years.

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

6 (d) An offender convicted of the crime of sexually violent predator
7 escape shall be sentenced to a minimum term of total confinement not
8 less than sixty months.

9 (e) An offender convicted of aggravated first degree murder for a
10 murder that was committed prior to the offender's eighteenth birthday
11 shall be sentenced as set forth in RCW 10.95.030(3).

12 (2) During such minimum terms of total confinement, no offender
13 subject to the provisions of this section is eligible for community
14 custody, earned release time, furlough, home detention, partial
15 confinement, work crew, work release, or any other form of early
16 release authorized under RCW 9.94A.728, or any other form of authorized
17 leave of absence from the correctional facility while not in the direct
18 custody of a corrections officer. The provisions of this subsection
19 shall not apply: (a) In the case of an offender in need of emergency
20 medical treatment; (b) for the purpose of commitment to an inpatient
21 treatment facility in the case of an offender convicted of the crime of
22 rape in the first degree; or (c) for an extraordinary medical placement
23 when authorized under RCW 9.94A.728(~~(+4)~~) (3).

24 (3)(a) Subsection (1)(a) through (d) of this section shall not be
25 applied in sentencing of juveniles tried as adults pursuant to RCW
26 13.04.030(1)(e)(i).

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

29 **Sec. 2.** RCW 9.94A.6332 and 2010 c 224 s 11 are each amended to
30 read as follows:

31 The procedure for imposing sanctions for violations of sentence
32 conditions or requirements is as follows:

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

36 (2) If the offender was sentenced under the special sex offender

1 sentencing alternative, any sanctions shall be imposed by the
2 department or the court pursuant to RCW 9.94A.670.

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

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

8 (5) If the offender was released pursuant to section 9 of this act,
9 any sanctions shall be imposed by the board pursuant to RCW 9.95.435.

10 (6) If the offender was sentenced pursuant to RCW 10.95.030(3), any
11 sanctions shall be imposed by the board pursuant to RCW 9.95.435.

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

19 ~~((+6))~~ (8) If the offender is not being supervised by the
20 department, any sanctions shall be imposed by the court pursuant to RCW
21 9.94A.6333.

22 **Sec. 3.** RCW 9.94A.729 and 2011 1st sp.s. c 40 s 4 are each amended
23 to read as follows:

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

33 (b) Any program established pursuant to this section shall allow an
34 offender to earn early release credits for presentence incarceration.
35 If an offender is transferred from a county jail to the department, the
36 administrator of a county jail facility shall certify to the department
37 the amount of time spent in custody at the facility and the amount of

1 earned release time. The department may approve a jail certification
2 from a correctional agency that calculates earned release time based on
3 the actual amount of confinement time served by the offender before
4 sentencing when an erroneous calculation of confinement time served by
5 the offender before sentencing appears on the judgment and sentence.

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

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

12 (a) In the case of an offender sentenced pursuant to RCW
13 10.95.030(3) or section 9 of this act, the aggregate earned release
14 time may not exceed fifteen percent of the sentence.

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

19 ~~((b))~~ (c) In the case of an offender convicted of a serious
20 violent offense, or a sex offense that is a class A felony, committed
21 on or after July 1, 2003, the aggregate earned release time may not
22 exceed ten percent of the sentence.

23 ~~((e))~~ (d) An offender is qualified to earn up to fifty percent of
24 aggregate earned release time if he or she:

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

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

28 (A) A sex offense;

29 (B) A violent offense;

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

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

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

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

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

1 (iii) Has no prior conviction for the offenses listed in ~~((e))~~
2 (d)(ii) of this subsection;

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

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

9 ~~((d))~~ (e) In no other case shall the aggregate earned release
10 time exceed one-third of the total sentence.

11 (4) The department shall perform a risk assessment of each offender
12 who may qualify for earned early release under subsection (3)~~((e))~~
13 (d) of this section utilizing the risk assessment tool recommended by
14 the Washington state institute for public policy. Subsection
15 (3)~~((e))~~ (d) of this section does not apply to offenders convicted
16 after July 1, 2010.

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

21 (b) The department shall, as a part of its program for release to
22 the community in lieu of earned release, require the offender to
23 propose a release plan that includes an approved residence and living
24 arrangement. All offenders with community custody terms eligible for
25 release to community custody in lieu of earned release shall provide an
26 approved residence and living arrangement prior to release to the
27 community;

28 (c) The department may deny transfer to community custody in lieu
29 of earned release time if the department determines an offender's
30 release plan, including proposed residence location and living
31 arrangements, may violate the conditions of the sentence or conditions
32 of supervision, place the offender at risk to violate the conditions of
33 the sentence, place the offender at risk to reoffend, or present a risk
34 to victim safety or community safety. The department's authority under
35 this section is independent of any court-ordered condition of sentence
36 or statutory provision regarding conditions for community custody;

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

1 (i) Transfer an offender to partial confinement in lieu of earned
2 early release for a period not to exceed three months. The three
3 months in partial confinement is in addition to that portion of the
4 offender's term of confinement that may be served in partial
5 confinement as provided in RCW 9.94A.728(5);

6 (ii) Provide rental vouchers to the offender for a period not to
7 exceed three months if rental assistance will result in an approved
8 release plan. The voucher must be provided in conjunction with
9 additional transition support programming or services that enable an
10 offender to participate in services including, but not limited to,
11 substance abuse treatment, mental health treatment, sex offender
12 treatment, educational programming, or employment programming;

13 (e) For each offender who is the recipient of a rental voucher, the
14 department shall include, concurrent with the data that the department
15 otherwise obtains and records, the housing status of the offender for
16 the duration of the offender's supervision.

17 (6) An offender serving a term of confinement imposed under RCW
18 9.94A.670(5)(a) is not eligible for earned release credits under this
19 section.

20 **Sec. 4.** RCW 9.95.425 and 2009 c 28 s 30 are each amended to read
21 as follows:

22 (1) Whenever the board or a community corrections officer of this
23 state has reason to believe an offender released under RCW 9.95.420,
24 10.95.030(3), or section 9 of this act has violated a condition of
25 community custody or the laws of this state, any community corrections
26 officer may arrest or cause the arrest and detention of the offender
27 pending a determination by the board whether sanctions should be
28 imposed or the offender's community custody should be revoked. The
29 community corrections officer shall report all facts and circumstances
30 surrounding the alleged violation to the board, with recommendations.

31 (2) If the board or the department causes the arrest or detention
32 of an offender for a violation that does not amount to a new crime and
33 the offender is arrested or detained by local law enforcement or in a
34 local jail, the board or department, whichever caused the arrest or
35 detention, shall be financially responsible for local costs. Jail bed
36 costs shall be allocated at the rate established under RCW 9.94A.740.

1 **Sec. 5.** RCW 9.95.430 and 2001 2nd sp.s. c 12 s 308 are each
2 amended to read as follows:

3 Any offender released under RCW 9.95.420, 10.95.030(3), or section
4 9 of this act who is arrested and detained in physical custody by the
5 authority of a community corrections officer, or upon the written order
6 of the board, shall not be released from custody on bail or personal
7 recognizance, except upon approval of the board and the issuance by the
8 board of an order reinstating the offender's release on the same or
9 modified conditions. All chiefs of police, marshals of cities and
10 towns, sheriffs of counties, and all police, prison, and peace officers
11 and constables shall execute any such order in the same manner as any
12 ordinary criminal process.

13 **Sec. 6.** RCW 9.95.435 and 2007 c 363 s 3 are each amended to read
14 as follows:

15 (1) If an offender released by the board or a court under RCW
16 9.95.420, 10.95.030(3), or section 9 of this act violates any condition
17 or requirement of community custody, the board may transfer the
18 offender to a more restrictive confinement status to serve up to the
19 remaining portion of the sentence, less credit for any period actually
20 spent in community custody or in detention awaiting disposition of an
21 alleged violation and subject to the limitations of subsection (2) of
22 this section.

23 (2) Following the hearing specified in subsection (3) of this
24 section, the board may impose sanctions such as work release, home
25 detention with electronic monitoring, work crew, community restitution,
26 inpatient treatment, daily reporting, curfew, educational or counseling
27 sessions, supervision enhanced through electronic monitoring, or any
28 other sanctions available in the community, or may suspend the release
29 and sanction up to sixty days' confinement in a local correctional
30 facility for each violation, or revoke the release to community custody
31 whenever an offender released by the board or a court under RCW
32 9.95.420, 10.95.030(3), or section 9 of this act violates any condition
33 or requirement of community custody.

34 (3) If an offender released by the board or a court under RCW
35 9.95.420, 10.95.030(3), or section 9 of this act is accused of
36 violating any condition or requirement of community custody, he or she
37 is entitled to a hearing before the board or a designee of the board

1 prior to the imposition of sanctions. The hearing shall be considered
2 as offender disciplinary proceedings and shall not be subject to
3 chapter 34.05 RCW. The board shall develop hearing procedures and a
4 structure of graduated sanctions consistent with the hearing procedures
5 and graduated sanctions developed pursuant to RCW 9.94A.737. The board
6 may suspend the offender's release to community custody and confine the
7 offender in a correctional institution owned, operated by, or operated
8 under contract with the state prior to the hearing unless the offender
9 has been arrested and confined for a new criminal offense.

10 (4) The hearing procedures required under subsection (3) of this
11 section shall be developed by rule and include the following:

12 (a) Hearings shall be conducted by members or designees of the
13 board unless the board enters into an agreement with the department to
14 use the hearing officers established under RCW 9.94A.737;

15 (b) The board shall provide the offender with findings and
16 conclusions which include the evidence relied upon, and the reasons the
17 particular sanction was imposed. The board shall notify the offender
18 of the right to appeal the sanction and the right to file a personal
19 restraint petition under court rules after the final decision of the
20 board;

21 (c) The hearing shall be held unless waived by the offender, and
22 shall be electronically recorded. For offenders not in total
23 confinement, the hearing shall be held within thirty days of service of
24 notice of the violation, but not less than twenty-four hours after
25 notice of the violation. For offenders in total confinement, the
26 hearing shall be held within thirty days of service of notice of the
27 violation, but not less than twenty-four hours after notice of the
28 violation. The board or its designee shall make a determination
29 whether probable cause exists to believe the violation or violations
30 occurred. The determination shall be made within forty-eight hours of
31 receipt of the allegation;

32 (d) The offender shall have the right to: (i) Be present at the
33 hearing; (ii) have the assistance of a person qualified to assist the
34 offender in the hearing, appointed by the presiding hearing officer if
35 the offender has a language or communications barrier; (iii) testify or
36 remain silent; (iv) call witnesses and present documentary evidence;
37 (v) question witnesses who appear and testify; and (vi) be represented
38 by counsel if revocation of the release to community custody upon a

1 finding of violation is a probable sanction for the violation. The
2 board may not revoke the release to community custody of any offender
3 who was not represented by counsel at the hearing, unless the offender
4 has waived the right to counsel; and

5 (e) The sanction shall take effect if affirmed by the presiding
6 hearing officer.

7 (5) Within seven days after the presiding hearing officer's
8 decision, the offender may appeal the decision to the full board or to
9 a panel of three reviewing examiners designated by the chair of the
10 board or by the chair's designee. The sanction shall be reversed or
11 modified if a majority of the panel finds that the sanction was not
12 reasonably related to any of the following: (a) The crime of
13 conviction; (b) the violation committed; (c) the offender's risk of
14 reoffending; or (d) the safety of the community.

15 (6) For purposes of this section, no finding of a violation of
16 conditions may be based on unconfirmed or unconfirmable allegations.

17 **Sec. 7.** RCW 9.95.440 and 2008 c 231 s 45 are each amended to read
18 as follows:

19 In the event the board suspends the release status of an offender
20 released under RCW 9.95.420, 10.95.030(3), or section 9 of this act by
21 reason of an alleged violation of a condition of release, or pending
22 disposition of a new criminal charge, the board may nullify the
23 suspension order and reinstate release under previous conditions or any
24 new conditions the board determines advisable under RCW 9.94A.704.
25 Before the board may nullify a suspension order and reinstate release,
26 it shall determine that the best interests of society and the offender
27 shall be served by such reinstatement rather than return to
28 confinement.

29 **Sec. 8.** RCW 10.95.030 and 2010 c 94 s 3 are each amended to read
30 as follows:

31 (1) Except as provided in subsections (2) and (3) of this section,
32 any person convicted of the crime of aggravated first degree murder
33 shall be sentenced to life imprisonment without possibility of release
34 or parole. A person sentenced to life imprisonment under this section
35 shall not have that sentence suspended, deferred, or commuted by any
36 judicial officer and the indeterminate sentence review board or its

1 successor may not parole such prisoner nor reduce the period of
2 confinement in any manner whatsoever including but not limited to any
3 sort of good-time calculation. The department of social and health
4 services or its successor or any executive official may not permit such
5 prisoner to participate in any sort of release or furlough program.

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

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

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

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

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

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

36 (3) Any person convicted of the crime of aggravated first degree
37 murder for an offense committed prior to the person's eighteenth

1 birthday shall be sentenced to a minimum term of total confinement not
2 less than twenty years and not more than twenty-five years and a
3 maximum term of life.

4 (a) The person shall become eligible for early release upon
5 expiration of the minimum term. The court shall consider the following
6 factors in determining the minimum term:

7 (i) The offender's age at the time of the offense;

8 (ii) The offender's level of participation in the offense;

9 (iii) The offender's intellectual capacity;

10 (iv) The offender's ability to appreciate the risks and
11 consequences of his or her conduct;

12 (v) The degree of familial or peer pressure exerted upon the
13 offender in the commission of the offense;

14 (vi) The offender's familial and community environment;

15 (vii) The offender's educational history;

16 (viii) Any history of trauma in the offender's life;

17 (ix) The offender's faith and community involvement;

18 (x) The offender's involvement in the child welfare system;

19 (xi) The offender's potential for rehabilitation;

20 (xii) The outcomes of a comprehensive mental health evaluation
21 conducted by an adolescent mental health professional licensed in the
22 state of Washington;

23 (xiii) Any other mitigating factors or circumstances.

24 (b) 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 release
28 time, furlough, home detention, partial confinement, work crew, work
29 release, or any other form of early release authorized under RCW
30 9.94A.728, or any other form of authorized leave or absence from the
31 correctional facility while not in the direct custody of a corrections
32 officer. The provisions of this subsection shall not apply: (i) In
33 the case of an offender in need of emergency medical treatment; or (ii)
34 for an extraordinary medical placement when authorized under RCW
35 9.94A.728(3).

36 (c) No later than one hundred eighty days prior to the expiration
37 of the person's minimum term, the sentencing court or the sentencing
38 court's successor shall conduct, and the offender shall participate in,

1 a hearing to determine whether the person should be released before
2 expiration of the maximum term. The court shall consider the following
3 factors in determining whether release will be granted:

4 (i) The extent to which issues concerning juvenile brain
5 development contributed to the offense;

6 (ii) The offender's age at the time of the offense;

7 (iii) The offender's intellectual capacity;

8 (iv) The offender's level of participation in the offense;

9 (v) The offender's efforts towards rehabilitation, including
10 participation in and completion of rehabilitation programs while in
11 prison;

12 (vi) The offender's participation in and completion of educational
13 and employment programming while in prison;

14 (vii) Whether the offender's character deficiencies have been
15 reformed;

16 (viii) Any evidence submitted by the offender or the offender's
17 counsel; and

18 (ix) Any other mitigating factors or circumstances.

19 (d) The court shall order the person released, under such
20 affirmative and other conditions as the court determines appropriate,
21 unless the court determines by a preponderance of the evidence that,
22 despite such conditions, it is more likely than not that the person
23 will commit new violent criminal law violations if released. If the
24 court does not order the person released, the court shall set a new
25 minimum term of no more than five additional years.

26 (e) In a hearing conducted under (c) of this subsection, the court
27 shall provide opportunities for victims and survivors of victims of any
28 crimes for which the offender has been convicted to present statements
29 as set forth in RCW 7.69.032. To facilitate victim and survivor of
30 victim involvement, county prosecutor's offices shall ensure that any
31 victim impact statements and known contact information for victims of
32 record and survivors of victims are forwarded as part of the judgment
33 and sentence.

34 (f) In a hearing conducted under (c) of this subsection, the
35 offender shall be entitled to be represented by an attorney of his or
36 her choosing at his or her expense, except, upon the presentation of
37 satisfactory evidence of indigency and the request for the appointment
38 of an attorney by the offender, the court shall cause the appointment

1 of an attorney to represent the offender to be paid for at state
2 expense, and, in addition, the court shall assume all or such other
3 expenses in the presentation of evidence on behalf of the offender as
4 it may have authorized. Attorneys for the representation of offenders
5 at the review hearings shall be appointed by the superior courts for
6 the counties where the conviction occurred and the attorneys shall be
7 compensated in such manner and in such amount as shall be fixed in a
8 schedule of fees adopted by rule of the court.

9 (g) An offender released by the court pursuant to (d) of this
10 subsection is subject to the supervision of the department for a term
11 that shall be determined by the court. The department shall monitor
12 the offender's compliance with conditions imposed by the court and
13 promptly report any violations to the court. Any violation of
14 conditions established or modified by the court are subject to the
15 provisions of RCW 9.95.425 through 9.95.440.

16 NEW SECTION. Sec. 9. A new section is added to chapter 9.94A RCW
17 to read as follows:

18 (1) Notwithstanding any other provision of this chapter, any person
19 convicted of one or more crimes committed prior to the person's
20 eighteenth birthday who received an aggregate sentence of at least
21 twenty years may petition the sentencing court for early release after
22 serving no less than twenty years of total confinement, provided the
23 person has not been convicted for any felony in the five years
24 immediately prior to filing the petition, the person has not committed
25 a major violation in the twelve months prior to filing the petition for
26 early release, and the current sentence was not imposed under RCW
27 10.95.030 or 9.94A.507.

28 (2) No later than one hundred eighty days prior to serving at least
29 twenty years, the sentencing court or the sentencing court's successor
30 shall conduct, and the offender shall participate in, a hearing to
31 determine whether the person should be released before expiration of
32 the maximum term. The court shall consider the following factors in
33 determining whether release will be granted:

34 (a) The extent to which issues concerning juvenile brain
35 development contributed to the offense;

36 (b) The offender's age at the time of the offense;

37 (c) The offender's intellectual capacity;

- 1 (d) The offender's level of participation in the offense;
- 2 (e) The offender's efforts made toward rehabilitation, including
3 participation in and completion of rehabilitation programs while in
4 prison;
- 5 (f) The offender's participation in and completion of educational
6 and employment programming while in prison;
- 7 (g) Whether the offender's character deficiencies have been
8 reformed;
- 9 (h) Any evidence submitted by the offender or the offender's
10 counsel; and
- 11 (i) Any other mitigating factors or circumstances.

12 (3) The court shall order the person released, under such
13 affirmative and other conditions as the court determines appropriate,
14 unless the court determines by a preponderance of the evidence that,
15 despite such conditions, it is more likely than not that the person
16 will commit new violent criminal law violations if released. If the
17 court does not order the person released, the court shall set a new
18 minimum term of no more than five additional years.

19 (4) In a hearing conducted under subsection (2) of this section,
20 the court shall provide opportunities for victims and survivors of
21 victims of any crimes the offender has been convicted to present
22 statements as set forth in RCW 7.69.032. To facilitate victim and
23 survivor of victim involvement, county prosecutor's offices shall
24 ensure that any victim impact statements and known contact information
25 for victims of record and survivors of victims are forwarded as part of
26 the judgment and sentence.

27 (5) An offender released by the court is subject to the supervision
28 of the department for a term that shall be determined by the court.
29 The term shall not exceed the maximum term of the sentence. The
30 department shall monitor the offender's compliance with conditions
31 imposed by the court and promptly report any violations to the court.
32 Any violation of conditions established or modified by the court are
33 subject to the provisions of RCW 9.95.425 through 9.95.440.

34 (6) In a hearing conducted under subsection (2) of this section,
35 the offender shall be entitled to be represented by an attorney of his
36 or her choosing at his or her expense, except, upon the presentation of
37 satisfactory evidence of indigency and the request for the appointment
38 of an attorney by the offender, the court shall cause the appointment

1 of an attorney to represent the offender to be paid for at state
2 expense, and, in addition, the court shall assume all or such other
3 expenses in the presentation of evidence on behalf of the offender as
4 it may have authorized. Attorneys for the representation of offenders
5 at the review hearings shall be appointed by the superior courts for
6 the counties where the conviction occurred and the attorneys shall be
7 compensated in such manner and in such amount as shall be fixed in a
8 schedule of fees adopted by rule of the court.

9 NEW SECTION. **Sec. 10.** A new section is added to chapter 10.95 RCW
10 to read as follows:

11 (1) A person, who was sentenced prior to June 1, 2013, to a term of
12 life without the possibility of parole for an offense committed prior
13 to their eighteenth birthday, shall be returned to the sentencing court
14 or the sentencing court's successor for the setting of a minimum and
15 maximum term. In no case may the minimum term be fixed at less than
16 twenty years or more than twenty-five years. The maximum term is life.
17 To the extent relevant information is available, the court shall
18 consider the following factors in determining the minimum term:

- 19 (a) The offender's age at the time of the offense;
20 (b) The offender's level of participation in the offense;
21 (c) The offender's intellectual capacity;
22 (d) The offender's ability to appreciate the risks and consequences
23 of his or her conduct at the time of the offense;
24 (e) The degree of familial or peer pressure exerted upon the
25 offender in the commission of the offense;
26 (f) The offender's familial and community environment at the time
27 of the offense;
28 (g) The offender's educational history;
29 (h) The history of trauma in the offender's life;
30 (i) The offender's faith and community involvement;
31 (j) The offender's involvement in the child welfare system;
32 (k) The offender's potential for rehabilitation;
33 (l) Any other mitigating factors or circumstances.

34 Release and supervision of a person will be governed by RCW
35 10.95.030(3)(g).

36 (2) The court shall provide an opportunity for victims and

1 survivors of victims of any crimes for which the offender has been
2 convicted to present a statement personally or by representation.

3 (3) The term of confinement the person has served to date shall be
4 included in calculating the minimum term remaining to be served.

5 NEW SECTION. **Sec. 11.** If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.

9 NEW SECTION. **Sec. 12.** This act is necessary for the immediate
10 preservation of the public peace, health, or safety, or support of the
11 state government and its existing public institutions, and takes effect
12 June 1, 2013.

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