

Stricken language would be deleted from and underlined language would be added to present law.
Act 539 of the Regular Session

State of Arkansas
91st General Assembly
Regular Session, 2017

As Engrossed: S2/27/17
A Bill

SENATE BILL 294

By: Senator Irvin

By: Representative Petty

For An Act To Be Entitled

AN ACT CONCERNING THE SENTENCING OF A PERSON UNDER
EIGHTEEN YEARS OF AGE; ESTABLISHING THE FAIR
*SENTENCING OF MINORS ACT OF 2017; TO DECLARE AN
EMERGENCY; AND FOR OTHER PURPOSES.*

Subtitle

*CONCERNING THE SENTENCING OF A PERSON
UNDER EIGHTEEN YEARS OF AGE; TO DECLARE
AN EMERGENCY; AND ESTABLISHING THE FAIR
SENTENCING OF MINORS ACT OF 2017.*

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Title.

This act shall be known and may be cited as the "Fair Sentencing of
Minors Act of 2017".

SECTION 2. DO NOT CODIFY. Legislative intent.

(a)(1) The General Assembly acknowledges and recognizes that minors
are constitutionally different from adults and that these differences must be
taken into account when minors are sentenced for adult crimes.

(2) As the United States Supreme Court quoted in Miller v.
Alabama, 132 S.Ct. 2455 (2012), "only a relatively small proportion of
adolescents" who engage in illegal activity "develop entrenched patterns of
problem behavior," and "developments in psychology and brain science continue
to show fundamental differences between juvenile and adult minds," including



“parts of the brain involved in behavior control”.

(3) Minors are more vulnerable to negative influences and outside pressures, including from their family and peers, and they have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings.

(4) The United States Supreme Court has emphasized through its cases in Miller, Roper v. Simmons, 543 U.S. 551 (2005), and Graham v. Florida, 560 U.S. 48 (2010), that “the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes”.

(5) Youthfulness both lessens a juvenile’s moral culpability and enhances the prospect that, as a youth matures into an adult and neurological development occurs, these individuals can become contributing members of society.

(b) In the wake of these United States Supreme Court decisions and the emerging juvenile brain and behavioral development science, several states, including Texas, Utah, South Dakota, Wyoming, Nevada, Iowa, Kansas, Kentucky, Montana, Alaska, West Virginia, Colorado, Hawaii, Delaware, Connecticut, Vermont, Massachussets, and the District of Columbia, have eliminated the sentence of life without parole for minors.

(c) It is the intent of the General Assembly to eliminate life without parole as a sentencing option for minors and to create more age-appropriate sentencing standards in compliance with the United States Constitution for minors who commit serious crimes.

SECTION 3. Arkansas Code § 5-4-104(b), concerning authorized sentences for capital murder or treason, is amended to read as follows:

(b) A defendant convicted of capital murder, § 5-10-101, or treason, § 5-51-201, shall be sentenced to death or life imprisonment without parole in accordance with §§ 5-4-601 – 5-4-605, 5-4-607, and 5-4-608, except if the defendant was younger than eighteen (18) years of age at the time he or she committed the capital murder or treason he or she shall be sentenced to:

~~(1) Life imprisonment without parole under § 5-4-606; or~~

~~(2) Life~~ life imprisonment with the possibility of parole after serving a minimum of ~~twenty-eight (28)~~ thirty (30) years’ imprisonment.

SECTION 4. Arkansas Code Title 5, Chapter 4, Subchapter 1, is amended to add an additional section to read as follows:

5-4-108. Sentencing for person who committed an offense when he or she was less than 18 years of age.

A defendant shall not be sentenced to death or life imprisonment without the possibility of parole for an offense if the defendant was less than eighteen (18) years of age at the time the offense was committed.

SECTION 5. Arkansas Code § 5-4-602(3), concerning the trial procedure for a capital murder charge, is amended to read as follows:

(3)(A) If the defendant is found guilty of capital murder, the same jury shall sit again in order to:

(i) Hear additional evidence as provided by subdivisions (4) and (5) of this section; and

(ii) Determine the sentence in the manner provided by § 5-4-603.

(B) However, if the state waives the death penalty, stipulates that no aggravating circumstance exists, or stipulates that mitigating circumstances outweigh aggravating circumstances, then:

(i) ~~No~~ A hearing under subdivision (3)(A) of this section is not required; and

(ii) The trial court shall sentence the defendant to life imprisonment without parole~~+~~.

(C) If the defendant was less than eighteen (18) years of age at the time of the offense, then a hearing under subdivision (3)(A) of this section is not required;

SECTION 6. Arkansas Code § 5-10-101(c), concerning the punishment for the criminal offense of capital murder, is amended to read as follows:

(c)(1) Capital murder is punishable as follows:

(A) If the defendant was eighteen (18) years of age or older at the time he or she committed the capital murder:

(i) Death; or

(ii) Life imprisonment without parole under §§ 5-4-601 – 5-4-605, 5-4-607, and 5-4-608; or

(B) *If the defendant was younger than eighteen (18) years*

of age at the time he or she committed the capital murder~~+~~,

~~(i) Life imprisonment without parole as it is defined in § 5-4-606; or~~

~~(ii) Life life imprisonment with the possibility of parole after serving a minimum of ~~twenty-eight (28)~~ thirty (30) years' imprisonment.~~

(2) For any purpose other than disposition under §§ 5-4-101 – 5-4-104, 5-4-201 – 5-4-204, 5-4-301 – 5-4-307, 5-4-401 – 5-4-404, 5-4-501 – 5-4-504, 5-4-601 – 5-4-605, 5-4-607, 5-4-608, 16-93-307, 16-93-313, and 16-93-314, capital murder is a Class Y felony.

SECTION 7. Arkansas Code § 5-10-102(c), concerning the sentence for murder in the first degree, is amended to read as follows:

(c)(1) Murder in the first degree is a Class Y felony.

(2) Unless the application of § 16-93-621 results in a person being eligible for parole at an earlier date, if a person was younger than eighteen (18) years of age at the time he or she committed murder in the first degree and is sentenced to life imprisonment, the person is eligible for parole after serving a minimum of ~~twenty-five (25)~~ years' imprisonment.

SECTION 8. Arkansas Code Title 16, Chapter 80, is amended to add an additional section to read as follows:

16-80-104. Comprehensive mental health evaluation for a minor convicted of capital murder or murder in the first degree.

(a) If a comprehensive mental health evaluation is not performed at the request of the minor convicted of capital murder, § 5-10-101, or murder in the first degree, § 5-10-102, before his or her trial or before he or she is sentenced, the circuit court shall ensure that a comprehensive mental health evaluation is conducted on the minor by an adolescent mental health professional licensed in the state before the minor's entry into the Department of Correction for a sentence of life imprisonment.

(b) A comprehensive mental health evaluation ordered under this section shall include without limitation the following information concerning the minor:

(1) Family interviews;

(2) Prenatal history;

- (3) Developmental history;
- (4) Medical history;
- (5) History of treatment for substance use;
- (6) Social history; and
- (7) A psychological evaluation.

(c) A comprehensive mental health evaluation conducted under this section:

(1) Is not admissible into evidence at a trial or sentencing over the objections of the minor; and

(2) Shall be included in any documentation or inmate file kept by the Department of Correction or, if the minor is eventually supervised on parole, the Department of Community Correction.

SECTION 9. Arkansas Code § 16-93-612(e), concerning parole eligibility procedures for offenses that occurred after January 1, 1994, is amended to read as follows:

(e) For an offender serving a sentence for a felony committed on or after January 1, 1994, § 16-93-614 governs that person's parole eligibility, unless otherwise noted and except:

(1) If the felony is murder in the first degree, § 5-10-102, kidnapping, if a Class Y felony, § 5-11-102(b)(1), aggravated robbery, § 5-12-103, rape, § 5-14-103, or causing a catastrophe, § 5-38-202(a), and the offense occurred after July 28, 1995, § 16-93-618 governs that person's parole eligibility;

(2) If the felony is manufacturing methamphetamine, § 5-64-423(a) or the former § 5-64-401, or possession of drug paraphernalia with the intent to manufacture methamphetamine, the former § 5-64-403(c)(5), and the offense occurred after April 9, 1999, § 16-93-618 governs that person's parole eligibility; ~~or~~

(3) If the felony is battery in the second degree, § 5-13-202, aggravated assault, § 5-13-204, terroristic threatening, § 5-13-301, domestic battering in the second degree, § 5-26-304, or residential burglary, § 5-39-201, and the offense occurred on or after April 1, 2015, § 16-93-620 governs that person's parole eligibility; ~~or~~

(4) If the felony was committed by a person who was a minor at the time of the offense, he or she was committed to the Department of

Correction, and the offense occurred before, on, or after the effective date of this act, § 16-93-621 governs that person's parole eligibility.

SECTION 10. Arkansas Code § 16-93-613, concerning parole eligibility for Class Y, Class A, and Class B felonies, is amended to add an additional subsection to read as follows:

(c) Except as provided for under § 16-93-619, for an offense committed before, on, or after the effective date of this act, a person who was a minor at the time of committing an offense listed under subsection (a) of this section is eligible for release on parole under this section.

SECTION 11. Arkansas Code § 16-93-614, concerning parole eligibility for offenses committed after January 1, 1994, is amended to add an additional subsection to read as follows:

(d) Except as provided for under § 16-93-619, for an offense committed before, on, or after the effective date of this act, a person who was a minor at the time of committing an offense listed under subsection (c) of this section is eligible for release on parole under this section.

SECTION 12. Arkansas Code § 16-93-618, concerning parole eligibility for certain Class Y felony offenses and certain methamphetamine offenses and the serving of seventy percent (70%) of a person's sentence, is amended to add an additional subsection to read as follows:

(f) Except as provided for under § 16-93-619, for an offense committed before, on, or after the effective date of this act, a person who was a minor at the time of committing an offense listed under subsection (a) of this section is eligible for release on parole under this section.

SECTION 13. Arkansas Code Title 16, Chapter 93, Subchapter 6, is amended to add an additional section to read as follows:

16-93-621. Parole eligibility – A person who was a minor at the time of committing an offense that was committed before, on, or after the effective date of this act.

(a)(1) A minor who was convicted and sentenced to the department for an offense committed before he or she was eighteen (18) years of age and in which the death of another person did not occur is eligible for release on

parole no later than after twenty (20) years of incarceration, including any applicable sentencing enhancements, and including an instance in which multiple sentences are to be served consecutively or concurrently, unless by law the minor is eligible for earlier parole eligibility.

(2)(A) A minor who was convicted and sentenced to the department for an offense committed before he or she was eighteen (18) years of age, in which the death of another person occurred, and that was committed before, on, or after the effective date of this act is eligible for release on parole no later than after twenty-five (25) years of incarceration if he or she was convicted of murder in the first degree, § 5-10-102, or no later than after thirty (30) years of incarceration if he or she was convicted of capital murder, § 5-10-101, including any applicable sentencing enhancements, unless by law the minor is eligible for earlier parole eligibility.

(B) Subsection (a)(2)(A) of this section applies retroactively to a minor whose offense was committed before he or she was eighteen (18) years of age, including minors serving sentences of life, regardless of the original sentences that were imposed.

(3) Credit for meritorious good time shall not be applied to calculations of time served under subsection (a) of this section for minors convicted and sentenced for capital murder, § 5-10-101(c), or when a life sentence is imposed for murder in the first degree, § 5-10-102.

(4) The calculation of the time periods under this subsection shall include any applicable sentence enhancements to which the minor was sentenced that accompany the sentence for the underlying offense.

(b)(1) The Parole Board shall ensure that a hearing to consider the parole eligibility of a person who was a minor at the time of the offense that was committed before, on, or after the effective date of this act takes into account how a minor offender is different from an adult offender and provides a person who was a minor at the time of the offense that was committed before, on, or after the effective date of this act with a meaningful opportunity to be released on parole based on demonstrated maturity and rehabilitation.

(2) During a parole eligibility hearing involving a person who was a minor at the time of the offense that was committed before, on, or after the effective date of this act, the board shall take into consideration in addition to other factors required by law to be considered by the board:

- (A) The diminished culpability of minors as compared to that of adults;
- (B) The hallmark features of youth;
- (C) Subsequent growth and increased maturity of the person during incarceration;
- (D) Age of the person at the time of the offense;
- (E) Immaturity of the person at the time of the offense;
- (F) The extent of the person's role in the offense and whether and to what extent an adult was involved in the offense;
- (G) The person's family and community circumstances at the time of the offense, including any history of abuse, trauma, and involvement in the child welfare system;
- (H) The person's participation in available rehabilitative and educational programs while in prison, if those programs have been made available, or use of self-study for self-improvement;
- (I) The results of comprehensive mental health evaluations conducted by an adolescent mental health professional licensed in the state at the time of sentencing and at the time the person becomes eligible for parole under this section; and
- (J) Other factors the board deems relevant.

(3) A person eligible for parole under this section may have an attorney present to represent him or her at the parole eligibility hearing.

(c)(1)(A) The Parole Board shall notify a victim of the crime before the board reviews parole eligibility under this section for an inmate convicted of the crime and provide information regarding victim input meetings, as well as state and national victim resource information.

(B) If the victim is incapacitated or deceased, the notice under subdivision (c)(1)(A) of this section shall be given to the victim's family.

(C) If the victim is less than eighteen (18) years of age, the notice under subdivision (c)(1)(A) of this section shall be given to the victim's parent or guardian.

(2) Victim notification under this subsection shall include:

(A) The location, date, and time of parole review; and

(B) The name and phone number of the individual to contact for additional information.

SECTION 14. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that in light of recent United States Supreme Court decisions in Miller v. Alabama and Montgomery v. Louisiana, more than one hundred persons in Arkansas are entitled to relief under those decisions; and that this act is immediately necessary in order to make those persons eligible for parole in order to be in compliance with Montgomery v. Louisiana. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/Irvin

APPROVED: 03/20/2017