

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
90th General Assembly  
Regular Session, 2015

As Engrossed: H3/25/15  
**A Bill**

HOUSE BILL 1197

By: Representative Leding  
By: Senator Irvin

### **For An Act To Be Entitled**

AN ACT CONCERNING THE SENTENCING OF A PERSON UNDER EIGHTEEN YEARS OF AGE; ESTABLISHING THE FAIR SENTENCING FOR MINORS ACT OF 2015; AND FOR OTHER PURPOSES.

### **Subtitle**

CONCERNING THE SENTENCING OF A PERSON UNDER EIGHTEEN YEARS OF AGE; ESTABLISHING THE FAIR SENTENCING FOR MINORS ACT OF 2015.

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

SECTION 1. DO NOT CODIFY. Title.

This act may be cited as the "Fair Sentencing for Minors Act of 2015".

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 being sentenced for adult crimes.

(2) As the United States Supreme Court held 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, Wyoming, Kansas, Kentucky, Montana, Alaska, West Virginia, Colorado, Hawaii, Delaware, and Massachussets have all 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 create more age-appropriate sentencing standards when minors commit serious crimes. It is also the intent of the General Assembly that in consideration of parole for those persons sentenced to life imprisonment for homicide offenses committed as minors, that the Parole Board have access to an evaluation conducted before the minors’ entries into the Department of Correction.

SECTION 3. 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)~~(i) Life imprisonment with the possibility of parole after serving a minimum of ~~twenty-eight (28)~~ thirty (30) years' imprisonment, if the defendant caused or had a purpose to cause the death of a person; or

(ii) Life imprisonment with the possibility of parole after serving a minimum of twenty (20) years imprisonment if the defendant did not cause and did not have a purpose to cause the death of a person.

(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 4. 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, he or she shall be sentenced to:

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

~~(2)~~(1) Life imprisonment with the possibility of parole after serving a minimum of ~~twenty-eight (28)~~ thirty (30) years' imprisonment, if the defendant caused or had a purpose to cause the death of a person; or

(2) Life imprisonment with the possibility of parole after serving a minimum of twenty (20) years' imprisonment if the defendant did not cause and did not have a purpose to cause the death of a person.

SECTION 5. Arkansas Code § 5-4-602(3), concerning 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 younger than eighteen (18) years of age at the time of the offense, then:

(i) A hearing under subdivision (3)(A) of this section is not required; and

(ii) The jury shall determine the sentence in the manner provided by § 5-4-609;

SECTION 6. Arkansas Code Title 5, Chapter 4, Subchapter 6, is amended to add an additional section to read as follows:

5-4-609. Findings required for defendant younger than eighteen years of age.

(a) If the defendant was younger than eighteen (18) years of age at the time of the offense, then the jury shall impose a sentence of life imprisonment with the possibility of parole after serving a minimum of:

(1) Thirty (30) years' imprisonment if the jury unanimously returns written findings that the defendant caused or had a purpose to cause the death of a person; or

(2) Twenty (20) years' imprisonment if the jury returns written findings that the defendant did not cause and did not have a purpose to cause the death of a person.

(b) If the jury does not make any finding required by subsection (a) of this section, the court shall impose a sentence of life imprisonment with the possibility of parole after serving a minimum of twenty (20) years' imprisonment.

*SECTION 7. Arkansas Code § 9-28-407(h)(1), concerning the nondisclosure of information possessed by a licensee or state agency engaged*

concerning the placement of a child, is amended to add a new subdivision to read as follows:

(Y) To a member of the Parole Board acting in his or her official capacity, but only if the member agrees not to permit any redisclosure of the information.

SECTION 8. Arkansas Code § 12-18-909(g), concerning the confidentiality of a child maltreatment report in the central registry, is amended to add a new subdivision to read as follows:

(22) A member of the Parole Board acting in his or her official capacity, but only if the member agrees not to permit any redisclosure of the information.

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; ~~or~~

(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 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 on or after the effective date of this act, § 16-93-619 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 in § 16-93-619, for an offense committed on or after the effective date of this act, a person who was a minor at the time of 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 in § 16-93-619, for an offense committed on or after the effective date of this act, a person who was a minor at the time of an offense listed under subsection (b) 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 in § 16-93-619, for an offense committed on or after the effective date of this act, a person who was a minor at the time of 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 a new section to read as follows:

16-93-619. Parole eligibility – A person who was a minor at the time of the offense that was committed on or after the effective date of this act.

(a) Unless by law the person is eligible for earlier parole eligibility, a person who was convicted and sentenced to the Department of Correction for an offense that was committed on or after the effective date of this act and before he or she was eighteen (18) years of age is eligible for release on parole as follows:

(1) A person who committed a nonhomicide offense under § 5-10-101 et seq., including any applicable sentence enhancements, or an offense in which he or she did not cause and did not have the purpose to cause the death of another person is eligible for release on parole no later than after his

or her twentieth year of incarceration, including instances in which multiple sentences are to be served consecutively or concurrently; or

(2) A person who committed a homicide offense under § 5-10-101 et seq. is eligible for release on parole no later than after his or her thirtieth year of incarceration.

(b) Notwithstanding any other provision of law to the contrary, credit for meritorious good time shall not be applied to calculations of time served under subsection (a) of this section:

(1) For a minor convicted and sentenced for capital murder under § 5-10-101(c); or

(2) When a life sentence is imposed for murder in the first degree under § 5-10-102.

(c)(1) If a comprehensive mental health evaluation is not performed at the request of a minor prior to trial or sentencing of a minor sentenced to life imprisonment, 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 the sentence of life imprisonment.

(2) The Parole Board shall order an inmate eligible for parole under this section to undergo a comprehensive mental health evaluation which shall include:

(A) Family interviews;

(B) Prenatal history;

(C) Developmental history;

(D) Medical history;

(E) History of treatment for substance use;

(F) Social history; and

(G) A psychological evaluation.

(3) A comprehensive mental health evaluation performed under this subsection shall include the following:

(A) Family interviews;

(B) Prenatal history;

(C) Developmental history;

(D) Medical history;

(E) History of treatment for substance use;

(F) Social history; and

(G) A psychological evaluation.

(4) The comprehensive mental health evaluation conducted under this subsection shall only be used for the purpose of determining parole eligibility.

(d)(1) The Parole Board shall ensure that the hearing to consider an inmate's parole eligibility under this section takes into account how minors are different from adult offenders and provides an inmate eligible under this section with a meaningful opportunity to be released on parole based on demonstrated maturity and rehabilitation.

(2) During a parole eligibility hearing involving an inmate described under this section, in addition to other factors required by law to be considered by the board, the board shall take into consideration:

(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 inmate during incarceration;

(D) Age of the inmate at the time of the offense;

(E) Immaturity of the inmate at the time of the offense;

(F) The extent of the inmate's role in the offense and whether and to what extent an adult was involved in the offense;

(G)(i) The inmate's family and community circumstances at the time of the offense, including any history of abuse, trauma, and involvement in the child welfare system.

(ii) Upon request by the board, the Division of Children and Family Services of the Department of Human Services shall provide the board with any information within the division's possession pertaining to the inmate's involvement in the child welfare system.

(iii) Information provided under subdivision (b)(2)(G)(ii) of this section shall not be disclosed to any person not authorized to receive the information under this subdivision (d)(2)(G);

(H) The inmate's participation in available rehabilitative and educational programs while in prison, if the rehabilitative and educational programs have been made available, or use of self-study for self-improvement;

(I) The results of a comprehensive mental health

evaluation conducted by an adolescent mental health professional licensed in the state at the time of sentencing and the mental health evaluation the board has ordered under subdivision (c)(2) of this section; and

(J) Other factors the board deems relevant.

(e)(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 (e)(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 (e)(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.

/s/Leding