

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

A Bill

HOUSE BILL 1197

5 By: Representative Leding
6 By: Senator Irvin
7

For An Act To Be Entitled

9 AN ACT CONCERNING THE SENTENCING OF A PERSON UNDER
10 EIGHTEEN YEARS OF AGE; ESTABLISHING THE FAIR
11 SENTENCING FOR MINORS ACT OF 2015; AND FOR OTHER
12 PURPOSES.
13
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Subtitle

15 CONCERNING THE SENTENCING OF A PERSON
16 UNDER EIGHTEEN YEARS OF AGE; ESTABLISHING
17 THE FAIR SENTENCING FOR MINORS ACT OF
18 2015.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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24 SECTION 1. DO NOT CODIFY. Title.

25 This act may be cited as the "Fair Sentencing for Minors Act of 2015".
26

27 SECTION 2. DO NOT CODIFY. Legislative intent.

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

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



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

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

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

14 (b) In the wake of these United States Supreme Court decisions and the
 15 emerging juvenile brain and behavioral development science, several states
 16 including Texas, Wyoming, Kansas, Kentucky, Montana, Alaska, West Virginia,
 17 Colorado, Hawaii, Delaware, and Massachussets have all eliminated the
 18 sentence of life without parole for minors.

19 (c) It is the intent of the General Assembly to eliminate life without
 20 parole as a sentencing option for minors and create more age-appropriate
 21 sentencing standards when minors commit serious crimes.

22
 23 SECTION 3. Arkansas Code § 5-10-101(c), concerning the punishment for
 24 the criminal offense of capital murder, is amended to read as follows:

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

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

28 (i) Death; or

29 (ii) Life imprisonment without parole under §§ 5-4-
 30 601 – 5-4-605, 5-4-607, and 5-4-608; or

31 (B) If the defendant was younger than eighteen (18) years
 32 of age at the time he or she committed the capital murder:

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

35 ~~(ii)~~(i) Life imprisonment with the possibility of
 36 parole after serving a minimum of twenty-eight (28) years’ imprisonment, if

1 the defendant caused or had a purpose to cause the death of a person; or
 2 (ii) Life imprisonment with the possibility of
 3 parole after serving a minimum of twenty (20) years imprisonment if the
 4 defendant did not cause and did not have a purpose to cause the death of a
 5 person.

6 (2) For any purpose other than disposition under §§ 5-4-101 – 5-
 7 4-104, 5-4-201 – 5-4-204, 5-4-301 – 5-4-307, 5-4-401 – 5-4-404, 5-4-501 – 5-
 8 4-504, 5-4-601 – 5-4-605, 5-4-607, 5-4-608, 16-93-307, 16-93-313, and 16-93-
 9 314, capital murder is a Class Y felony.

10
 11 SECTION 4. Arkansas Code § 5-4-104(b), concerning authorized sentences
 12 for capital murder or treason, is amended to read as follows:

13 (b) A defendant convicted of capital murder, § 5-10-101, or treason, §
 14 5-51-201, shall be sentenced to death or life imprisonment without parole in
 15 accordance with §§ 5-4-601 – 5-4-605, 5-4-607, and 5-4-608, except if the
 16 defendant was younger than eighteen (18) years of age at the time he or she
 17 committed the capital murder, he or she shall be sentenced to:

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

19 ~~(2)(1) Life imprisonment with the possibility of parole after~~
 20 ~~serving a minimum of twenty-eight (28) years' imprisonment, if the defendant~~
 21 ~~caused or had a purpose to cause the death of a person; or~~

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

25
 26 SECTION 5. Arkansas Code § 5-4-602(3), concerning trial procedure for
 27 a capital murder charge, is amended to read as follows:

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

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

32 (ii) Determine the sentence in the manner provided by
 33 § 5-4-603.

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

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

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

5 (C) If the defendant was younger than eighteen (18) years
 6 of age at the time of the offense, then:

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

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

11
 12 SECTION 6. Arkansas Code Title 5, Chapter 4, Subchapter 6, is amended
 13 to add an additional section to read as follows:

14 5-4-609. Findings required for defendant younger than eighteen years
 15 of age.

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

19 (1) Twenty-eight (28) years' imprisonment if the jury
 20 unanimously returns written findings that the defendant caused or had a
 21 purpose to cause the death of a person; or

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

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

29
 30 SECTION 7. Arkansas Code § 16-93-612(e), concerning parole eligibility
 31 procedures for offenses that occurred after January 1, 1994, is amended to
 32 read as follows:

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

36 (1) If the felony is murder in the first degree, § 5-10-102,

1 kidnapping, if a Class Y felony, § 5-11-102(b)(1), aggravated robbery, § 5-
2 12-103, rape, § 5-14-103, or causing a catastrophe, § 5-38-202(a), and the
3 offense occurred after July 28, 1995, § 16-93-618 governs that person's
4 parole eligibility; ~~or~~

5 (2) If the felony is manufacturing methamphetamine, § 5-64-
6 423(a) or the former § 5-64-401, or possession of drug paraphernalia with the
7 intent to manufacture methamphetamine, the former § 5-64-403(c)(5), and the
8 offense occurred after April 9, 1999, § 16-93-618 governs that person's
9 parole eligibility; or

10 (3) If the felony was committed by a person who was a minor at
11 the time of the offense, he or she was committed to the Department of
12 Correction, and the offense occurred before, on, or after the effective date
13 of this act, § 16-93-619 governs that person's parole eligibility.

14
15 SECTION 8. Arkansas Code § 16-93-613, concerning parole eligibility
16 for Class Y, Class A, and Class B felonies, is amended to add an additional
17 subsection to read as follows:

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

22
23 SECTION 9. Arkansas Code § 16-93-614, concerning parole eligibility
24 for offenses committed after January 1, 1994, is amended to add an additional
25 subsection to read as follows:

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

30
31 SECTION 10. Arkansas Code § 16-93-618, concerning parole eligibility
32 for certain Class Y felony offenses and certain methamphetamine offenses and
33 the serving of seventy percent (70%) of a person's sentence, is amended to
34 add an additional subsection to read as follows:

35 (f) Except as provided for in § 16-93-619, for an offense committed
36 before, on, or after the effective date of this act, a person who was a minor

1 at the time of an offense listed under subsection (a) of this section is
2 eligible for release on parole under this section.

3
4 SECTION 11. Arkansas Code Title 16, Chapter 93, Subchapter 6, is
5 amended to add a new section to read as follows:

6 16-93-619. Parole eligibility – A person who was a minor at the time
7 of the offense that was committed before, on, or after the effective date of
8 this act.

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

14 (1) A person who committed a nonhomicide offense under § 5-10-
15 101 et seq., including any applicable sentence enhancements, or an offense in
16 which he or she did not cause and did not have the purpose to cause the death
17 of another person is eligible for release on parole no later than after his
18 or her twentieth year of incarceration, including instances in which multiple
19 sentences are to be served consecutively or concurrently; or

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

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

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

31 (A) The diminished culpability of minors as compared to
32 that of adults;

33 (B) The hallmark features of youth;

34 (C) Subsequent growth and increased maturity of the inmate
35 during incarceration;

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

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

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

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

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

10 (I) Other factors the board deems relevant.

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