

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

As Engrossed: H3/25/15

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
14

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:
23

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. It is also the
22 intent of the General Assembly that in consideration of parole for those
23 persons sentenced to life imprisonment for homicide offenses committed as
24 minors, that the Parole Board have access to an evaluation conducted before
25 the minors’ entries into the Department of Correction.

26
27 SECTION 3. Arkansas Code § 5-10-101(c), concerning the punishment for
28 the criminal offense of capital murder, is amended to read as follows:

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

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

32 (i) Death; or

33 (ii) Life imprisonment without parole under §§ 5-4-
34 601 – 5-4-605, 5-4-607, and 5-4-608; or

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

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

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

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

11 (2) For any purpose other than disposition under §§ 5-4-101 – 5-
12 4-104, 5-4-201 – 5-4-204, 5-4-301 – 5-4-307, 5-4-401 – 5-4-404, 5-4-501 – 5-
13 4-504, 5-4-601 – 5-4-605, 5-4-607, 5-4-608, 16-93-307, 16-93-313, and 16-93-
14 314, capital murder is a Class Y felony.

15
16 SECTION 4. Arkansas Code § 5-4-104(b), concerning authorized sentences
17 for capital murder or treason, is amended to read as follows:

18 (b) A defendant convicted of capital murder, § 5-10-101, or treason, §
19 5-51-201, shall be sentenced to death or life imprisonment without parole in
20 accordance with §§ 5-4-601 – 5-4-605, 5-4-607, and 5-4-608, except if the
21 defendant was younger than eighteen (18) years of age at the time he or she
22 committed the capital murder, he or she shall be sentenced to:

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

24 ~~(2)~~(1) Life imprisonment with the possibility of parole after
25 serving a minimum of ~~twenty-eight (28)~~ thirty (30) years' imprisonment, if
26 the defendant caused or had a purpose to cause the death of a person; or

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

30
31 SECTION 5. Arkansas Code § 5-4-602(3), concerning trial procedure for
32 a capital murder charge, is amended to read as follows:

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

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

1 (ii) Determine the sentence in the manner provided by
2 § 5-4-603.

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

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

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

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

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

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

16
17 SECTION 6. Arkansas Code Title 5, Chapter 4, Subchapter 6, is amended
18 to add an additional section to read as follows:

19 5-4-609. Findings required for defendant younger than eighteen years
20 of age.

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

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

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

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

34
35 SECTION 7. Arkansas Code § 9-28-407(h)(1), concerning the
36 nondisclosure of information possessed by a licensee or state agency engaged

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

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

6
7 SECTION 8. Arkansas Code § 12-18-909(g), concerning the
8 confidentiality of a child maltreatment report in the central registry, is
9 amended to add a new subdivision to read as follows:

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

13
14 SECTION 9. Arkansas Code § 16-93-612(e), concerning parole eligibility
15 procedures for offenses that occurred after January 1, 1994, is amended to
16 read as follows:

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

20 (1) If the felony is murder in the first degree, § 5-10-102,
21 kidnapping, if a Class Y felony, § 5-11-102(b)(1), aggravated robbery, § 5-
22 12-103, rape, § 5-14-103, or causing a catastrophe, § 5-38-202(a), and the
23 offense occurred after July 28, 1995, § 16-93-618 governs that person's
24 parole eligibility; ~~or~~

25 (2) If the felony is manufacturing methamphetamine, § 5-64-
26 423(a) or the former § 5-64-401, or possession of drug paraphernalia with the
27 intent to manufacture methamphetamine, the former § 5-64-403(c)(5), and the
28 offense occurred after April 9, 1999, § 16-93-618 governs that person's
29 parole eligibility; or

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

34
35 SECTION 10. Arkansas Code § 16-93-613, concerning parole eligibility
36 for Class Y, Class A, and Class B felonies, is amended to add an additional

1 subsection to read as follows:

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

6
7 SECTION 11. Arkansas Code § 16-93-614, concerning parole eligibility
8 for offenses committed after January 1, 1994, is amended to add an additional
9 subsection to read as follows:

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

14
15 SECTION 12. Arkansas Code § 16-93-618, concerning parole eligibility
16 for certain Class Y felony offenses and certain methamphetamine offenses and
17 the serving of seventy percent (70%) of a person's sentence, is amended to
18 add an additional subsection to read as follows:

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

23
24 SECTION 13. Arkansas Code Title 16, Chapter 93, Subchapter 6, is
25 amended to add a new section to read as follows:

26 16-93-619. Parole eligibility – A person who was a minor at the time
27 of the offense that was committed on or after the effective date of this act.

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

33 (1) A person who committed a nonhomicide offense under § 5-10-
34 101 et seq., including any applicable sentence enhancements, or an offense in
35 which he or she did not cause and did not have the purpose to cause the death
36 of another person is eligible for release on parole no later than after his

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

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

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

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

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

13 (c)(1) If a comprehensive mental health evaluation is not performed at
14 the request of a minor prior to trial or sentencing of a minor sentenced to
15 life imprisonment, the circuit court shall ensure that a comprehensive mental
16 health evaluation is conducted on the minor by an adolescent mental health
17 professional licensed in the state before the minor's entry into the
18 Department of Correction for the sentence of life imprisonment.

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

22 (A) Family interviews;

23 (B) Prenatal history;

24 (C) Developmental history;

25 (D) Medical history;

26 (E) History of treatment for substance use;

27 (F) Social history; and

28 (G) A psychological evaluation.

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

31 (A) Family interviews;

32 (B) Prenatal history;

33 (C) Developmental history;

34 (D) Medical history;

35 (E) History of treatment for substance use;

36 (F) Social history; and

1 (G) A psychological evaluation.

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

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

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

13 (A) The diminished culpability of minors as compared to
14 that of adults;

15 (B) The hallmark features of youth;

16 (C) Subsequent growth and increased maturity of the inmate
17 during incarceration;

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

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

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

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

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

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

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

36 (I) The results of a comprehensive mental health

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

4 (J) Other factors the board deems relevant.

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

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

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

15 (2) Victim notification under this subsection shall include:

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

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

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20 /s/Leding
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