

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

A Bill

SENATE BILL 294

5 By: Senator Irvin
6

For An Act To Be Entitled

8 AN ACT CONCERNING THE SENTENCING OF A PERSON UNDER
9 EIGHTEEN YEARS OF AGE; ESTABLISHING THE FAIR
10 SENTENCING OF MINORS ACT OF 2017; AND FOR OTHER
11 PURPOSES.
12
13

Subtitle

14 CONCERNING THE SENTENCING OF A PERSON
15 UNDER EIGHTEEN YEARS OF AGE; AND
16 ESTABLISHING THE FAIR SENTENCING OF
17 MINORS ACT OF 2017.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 SECTION 1. DO NOT CODIFY. Title.

24 This act shall be known and may be cited as the "Fair Sentencing of
25 Minors Act of 2017".
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 sentenced for adult crimes.

31 (2) As the United States Supreme Court quoted 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, Utah, South Dakota, Wyoming, Nevada, Iowa, Kansas, Kentucky,
17 Montana, Alaska, West Virginia, Colorado, Hawaii, Delaware, Connecticut,
18 Vermont, Massachussets, and the District of Columbia, have eliminated the
19 sentence of life without parole for minors.

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

24
25 SECTION 3. Arkansas Code § 5-4-104(b), concerning authorized
26 sentences for capital murder or treason, is amended to read as follows:

27 (b) A defendant convicted of capital murder, § 5-10-101, or treason, §
28 5-51-201, shall be sentenced to death or life imprisonment without parole in
29 accordance with §§ 5-4-601 – 5-4-605, 5-4-607, and 5-4-608, except if the
30 defendant was younger than eighteen (18) years of age at the time he or she
31 committed the capital murder or treason he or she shall be sentenced to:

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

33 ~~(2)~~(1) Life imprisonment with the possibility of parole after
34 serving a minimum of ~~twenty-eight (28)~~ thirty (30) years’ imprisonment if the
35 defendant caused or had a purpose to cause the death of a person; or

36 (2) Life imprisonment with the possibility of parole after

1 servicing a minimum of twenty (20) years' imprisonment if the defendant did not
 2 cause and did not have a purpose to cause the death of a person.

3
 4 SECTION 4. Arkansas Code Title 5, Chapter 4, Subchapter 1, is amended
 5 to add an additional section to read as follows:

6 5-4-108. Sentencing for person who committed an offense when he or she
 7 was less than 18 years of age.

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

11
 12 SECTION 5. Arkansas Code § 5-4-602(3), concerning the trial procedure
 13 for a capital murder charge, is amended to read as follows:

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

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

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

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

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

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

27 (C) If the defendant was less than eighteen (18) years of
 28 age at the time of the offense, then:

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

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

33
 34 SECTION 6. Arkansas Code Title 5, Chapter 4, Subchapter 6, is amended
 35 to add an additional section to read as follows:

36 5-4-609. Findings required for defendant less than eighteen (18) years

1 of age.

2 (a) If the defendant was less than eighteen (18) years of age at the
3 time of the offense, the jury shall sentence the defendant to life
4 imprisonment with the possibility of parole after serving a minimum of:

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

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

11 (b) If the jury does not return a written finding required under
12 subsection (a) of this section, the court shall sentence the defendant to
13 life imprisonment with the possibility of parole after serving a minimum of
14 twenty (20) years' imprisonment.

15
16 SECTION 7. Arkansas Code § 5-10-101(c), concerning the punishment for
17 the criminal offense of capital murder, is amended to read as follows:

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

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

21 (i) Death; or

22 (ii) Life imprisonment without parole under §§ 5-4-
23 601 – 5-4-605, 5-4-607, and 5-4-608; or

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

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

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

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

36 (2) For any purpose other than disposition under §§ 5-4-101 – 5-

1 4-104, 5-4-201 – 5-4-204, 5-4-301 – 5-4-307, 5-4-401 – 5-4-404, 5-4-501 – 5-
2 4-504, 5-4-601 – 5-4-605, 5-4-607, 5-4-608, 16-93-307, 16-93-313, and 16-93-
3 314, capital murder is a Class Y felony.

4
5 SECTION 8. Arkansas Code § 5-10-102(c), concerning the sentence for
6 murder in the first degree, is amended to read as follows:

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

8 (2) Unless the application of § 16-93-621 results in a person
9 being eligible for parole at an earlier date, if a person was younger than
10 eighteen (18) years of age at the time he or she committed murder in the
11 first degree and is sentenced to life imprisonment, the person is eligible
12 for parole after serving a minimum of thirty (30) years' imprisonment.

13
14 SECTION 9. Arkansas Code Title 16, Chapter 80, is amended to add an
15 additional section to read as follows:

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

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

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

- 28 (1) Family interviews;
- 29 (2) Prenatal history;
- 30 (3) Developmental history;
- 31 (4) Medical history;
- 32 (5) History of treatment for substance use;
- 33 (6) Social history; and
- 34 (7) A psychological evaluation.

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

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

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

6
 7 SECTION 10. Arkansas Code § 16-93-612(e), concerning parole
 8 eligibility procedures for offenses that occurred after January 1, 1994, is
 9 amended to read as follows:

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

13 (1) If the felony is murder in the first degree, § 5-10-102,
 14 kidnapping, if a Class Y felony, § 5-11-102(b)(1), aggravated robbery, § 5-
 15 12-103, rape, § 5-14-103, or causing a catastrophe, § 5-38-202(a), and the
 16 offense occurred after July 28, 1995, § 16-93-618 governs that person's
 17 parole eligibility;

18 (2) If the felony is manufacturing methamphetamine, § 5-64-
 19 423(a) or the former § 5-64-401, or possession of drug paraphernalia with the
 20 intent to manufacture methamphetamine, the former § 5-64-403(c)(5), and the
 21 offense occurred after April 9, 1999, § 16-93-618 governs that person's
 22 parole eligibility; ~~or~~

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

28 (4) If the felony was committed by a person who was a minor at
 29 the time of the offense, he or she was committed to the Department of
 30 Correction, and the offense occurred before, on, or after the effective date
 31 of this act, § 16-93-621 governs that person's parole eligibility.

32
 33 SECTION 11. Arkansas Code § 16-93-613, concerning parole eligibility
 34 for Class Y, Class A, and Class B felonies, is amended to add an additional
 35 subsection to read as follows:

36 (c) Except as provided for under § 16-93-619, for an offense committed

1 before, on, or after the effective date of this act, a person who was a minor
2 at the time of committing an offense listed under subsection (a) of this
3 section is eligible for release on parole under this section.
4

5 SECTION 12. Arkansas Code § 16-93-614, concerning parole eligibility
6 for offenses committed after January 1, 1994, is amended to add an additional
7 subsection to read as follows:

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

13 SECTION 13. Arkansas Code § 16-93-618, concerning parole eligibility
14 for certain Class Y felony offenses and certain methamphetamine offenses and
15 the serving of seventy percent (70%) of a person's sentence, is amended to
16 add an additional subsection to read as follows:

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

22 SECTION 14. Arkansas Code Title 16, Chapter 93, Subchapter 6, is
23 amended to add an additional section to read as follows:

24 16-93-621. Parole eligibility – A person who was a minor at the time
25 of committing an offense that was committed before, on, or after the
26 effective date of this act.

27 (a)(1) Unless by law the minor is eligible for earlier parole
28 eligibility, a minor who was convicted and sentenced to the Department of
29 Correction for an offense that was committed before, on, or after the
30 effective date of this act and before he or she was eighteen (18) years of
31 age is eligible for release on parole as follows:

32 (A) A minor who was sentenced for committing an offense in
33 which the death of another person did not occur or in which he or she did not
34 have a purpose to cause the death of another person, including any applicable
35 sentencing enhancements, is eligible for release on parole no later than
36 after twenty (20) years of incarceration, including an instance in which

1 multiple sentences are to be served consecutively or concurrently; or

2 (B) A minor who was sentenced for committing an offense in
3 which the death of another person occurred and where the minor had a purpose
4 to cause the death of another person, including any sentence enhancements, is
5 eligible for release on parole no later than after thirty (30) years of
6 incarceration.

7 (2) This section applies retroactively to a minor whose offense
8 was committed before he or she was eighteen (18) years of age, including
9 minors serving sentences of life, regardless of the original sentences that
10 were imposed.

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

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

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

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

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

32 (B) The hallmark features of youth;

33 (C) Subsequent growth and increased maturity of the person
34 during incarceration;

35 (D) Age of the person at the time of the offense;

36 (E) Immaturity of the person at the time of the offense;

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

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

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

9 (I) The results of comprehensive mental health evaluations
10 conducted by an adolescent mental health professional licensed in the state
11 at the time of sentencing and at the time the person becomes eligible for
12 parole under this section; and

13 (J) Other factors the board deems relevant.

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

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