

2017 Regular Session

HOUSE BILL NO. 45

BY REPRESENTATIVE MACK

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

JUVENILES: Provides relative to sentencing and parole of certain juvenile offenders sentenced to life imprisonment and terms of imprisonment of more than thirty years

1 AN ACT

2 To amend and reenact R.S. 15:574.4(D)(1)(introductory paragraph) and (E)(1)(a) and Code  
3 of Criminal Procedure Article 878.1, relative to juvenile parole eligibility and  
4 sentencing; to provide relative to parole eligibility for juveniles convicted and  
5 sentenced to life imprisonment without the possibility of parole; to provide for parole  
6 eligibility for juveniles sentenced to a term of imprisonment of more than thirty  
7 years; to provide for conditions; to provide relative to judicial determinations of  
8 parole eligibility for certain juvenile offenders; to provide relative to the parole  
9 eligibility hearing for juvenile offenders convicted of first degree murder or second  
10 degree murder; to provide relative to applicability; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 15:574.4(D)(1)(introductory paragraph) and (E)(1)(a) are hereby  
13 amended and reenacted to read as follows:

14 §574.4. Parole; eligibility

15 \* \* \*

16 D.(1) Notwithstanding any provision of law to the contrary, any person  
17 serving a sentence of life imprisonment, or imprisonment for more than thirty years,  
18 who was under the age of eighteen years at the time of the commission of the  
19 offense, except for a person serving a life sentence for a conviction of first degree  
20 murder (R.S. 14:30) or second degree murder (R.S. 14:30.1), shall be eligible for

1 parole consideration pursuant to the provisions of this Subsection if all of the  
2 following conditions have been met:

3 \* \* \*

4 E.(1) Notwithstanding any provision of law to the contrary, any person  
5 serving a sentence of life imprisonment for a conviction of first degree murder (R.S.  
6 14:30) or second degree murder (R.S. 14:30.1) who was under the age of eighteen  
7 years at the time of the commission of the offense shall be eligible for parole  
8 consideration pursuant to the provisions of this Subsection if a judicial determination  
9 has been made that the person is entitled to parole eligibility pursuant to Code of  
10 Criminal Procedure Article 878.1 and all of the following conditions have been met:

11 (a) The offender has served ~~thirty-five~~ thirty years of the sentence imposed.

12 \* \* \*

13 Section 2. Code of Criminal Procedure Article 878.1 is hereby amended and  
14 reenacted to read as follows:

15 Art. 878.1. ~~Sentencing hearing~~ Hearing to determine parole eligibility for certain  
16 juvenile offenders

17 A.(1) In any case where an offender is to be sentenced to life imprisonment  
18 for a conviction of first degree murder (R.S. 14:30) or second degree murder (R.S.  
19 14:30.1) where the offender was under the age of eighteen years at the time of the  
20 commission of the offense, a hearing shall be conducted prior to sentencing to  
21 determine whether the sentence shall be imposed with or without parole eligibility  
22 pursuant to the provisions of R.S. 15:574.4(E).

23 (2) For any offender serving a sentence of life imprisonment for a conviction  
24 of first degree murder (R.S. 14:30) or second degree murder (R.S. 14:30.1) who was  
25 under the age of eighteen years at the time of the commission of the offense and  
26 whose conviction became final prior to June 25, 2012, the district attorney of the  
27 parish in which the offender was convicted may petition the court for a hearing to  
28 determine whether the offender is entitled to parole eligibility pursuant to R.S.  
29 15:574.4(E). The district attorney may waive the hearing and concede, in writing,

1 that the offender is entitled to parole eligibility pursuant to R.S. 15:574.4(E). Failure  
2 of the district attorney to petition the court for the hearing prior to August 1, 2019,  
3 results in the district attorney's waiver of the hearing and concession that the offender  
4 is entitled to parole eligibility pursuant to R.S. 15:574.4(E).

5 B. At the hearing, the prosecution and defense shall be allowed to introduce  
6 any aggravating and mitigating evidence that is relevant to the charged offense or the  
7 character of the offender, including but not limited to the facts and circumstances of  
8 the crime, the criminal history of the offender, the offender's level of family support,  
9 social history, and such other factors as the court may deem relevant. Expert witness  
10 testimony is only necessary as required by the court. ~~Sentences imposed without~~  
11 ~~parole eligibility should normally be reserved for the worst offenders and the worst~~  
12 ~~cases.~~

13 C. The sole purpose of the hearing is to determine whether the sentence shall  
14 be imposed with or without parole eligibility pursuant to R.S. 15:574.4(E) or, for  
15 persons whose convictions were final prior to June 25, 2012, whether the offender  
16 is entitled to parole eligibility pursuant to R.S. 15:574.4(E). The court shall state for  
17 the record the considerations taken into account and the factual basis for its  
18 determination. Sentences imposed without parole eligibility and determinations that  
19 an offender is not entitled to parole eligibility should normally be reserved for the  
20 worst offenders and the worst cases.

21 Section 3. The provisions of R.S. 15:574.4(E) as amended by this Act shall apply  
22 prospectively and retroactively to any person convicted of first degree murder (R.S. 14:30)  
23 or second degree murder (R.S. 14:30.1) who was under the age of eighteen years at the time  
24 of the commission of the offense regardless of the date of conviction.

25 Section 4. This Act shall become effective upon signature by the governor or, if not  
26 signed by the governor, upon expiration of the time for bills to become law without signature  
27 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
28 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
29 effective on the day following such approval.

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**DIGEST**

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 45 Original

2017 Regular Session

Mack

**Abstract:** Provides relative to sentencing and parole of certain juvenile offenders sentenced to life imprisonment and terms of imprisonment of more than thirty years.

***Juveniles sentenced to life imprisonment without parole for non-homicide offenses:***

Present law crimes of first degree rape (formerly aggravated rape) (R.S. 14:42) and aggravated kidnapping (R.S. 14:44) both carry a sentence of life imprisonment without benefit of parole.

In the case of *Graham v. Florida*, 560 U.S. 48 (2010), the U.S. Supreme Court held that the 8th Amendment's prohibition on cruel and unusual punishment does not permit a juvenile offender to be sentenced to life in prison without a reasonable opportunity for parole for a non-homicide crime.

Present law (R.S. 15:574.4(D)) provides parole eligibility for juvenile offenders serving a life sentence for aggravated rape or aggravated kidnapping when certain conditions are met, including the requirement that the person serve 30 years of the sentence imposed.

In the case of *State ex rel. Alden Morgan v. State*, 2015-KH-0100 (La. 10/19/16), the La. Supreme Court held that considerations of equity and consistency required that present law (R.S. 15:574.4(D)) be applied to sentences in which a defendant is serving an effective life sentence for a single non-homicide offense that did not warrant an automatic life sentence.

Proposed law retains present law and provides parole eligibility for juvenile offenders sentenced to a term of imprisonment of more than 30 years when certain conditions are met, including the requirement that the person serve at least 30 years of the sentence imposed.

***Juveniles sentenced to life imprisonment without parole for homicide offenses:***

Present law crimes of first degree murder (R.S. 14:30) and second degree murder (R.S. 14:30.1) carry a sentence of life imprisonment without benefit of parole.

In the case *Miller v. Alabama*, 567 U.S. \_\_\_\_ (2012), the U.S. Supreme Court held that mandatory life imprisonment without parole for any offender under the age of 18 violates the 8th Amendment's prohibition on cruel and unusual punishment.

Present law (R.S. 15:574.4(E)) provides that a juvenile offender serving a sentence of life imprisonment for a conviction of first or second degree murder shall be eligible for parole consideration if a judicial determination has been made that the person is entitled to parole eligibility pursuant to present law (C.Cr.P. Art. 878.1) and certain conditions are met, including the requirement that the person serve 35 years of the sentence imposed.

Present law provides that in any case where an offender is to be sentenced to life imprisonment for a conviction of first or second degree murder and the offender was under the age of 18 years at the time of the commission of the offense, a hearing shall be conducted prior to sentencing to determine whether the sentence shall be imposed with or without parole eligibility. (C.Cr.P. Art. 878.1)

These provisions of present law relative to juvenile sentences of life imprisonment for homicide offenses was applied only to persons whose conviction became final after the U.S. Supreme Court's decision in *Miller*.

In the case of *Montgomery v. Louisiana*, 577 U.S. \_\_\_\_ (2016), the U.S. Supreme Court held that its previous ruling in *Miller* should be applied retroactively to persons whose conviction became final prior to the *Miller* decision which was rendered on June 25, 2012.

Proposed law does all of the following:

- (1) Provides parole eligibility for juvenile offenders sentenced to life imprisonment for first or second degree murder whose conviction became final prior to the U.S. Supreme Court's decision in *Miller*. These persons shall be eligible for parole consideration if a judicial determination has been made that the person is entitled to parole eligibility pursuant to proposed law (C.Cr.P. Art. 878.1(A)(2)) and certain conditions are met, including the requirement that the person serve 30 years of the sentence imposed.
- (2) Provides that for those juvenile offenders sentenced to life imprisonment for first or second degree murder and whose convictions became final prior to the U.S. Supreme Court's decision in *Miller*, the district attorney of the parish in which the offender was convicted may petition the court for a hearing to determine whether the offender is eligible for parole consideration. The district attorney may waive the hearing and concede that the offender is entitled to parole eligibility. Failure of the district attorney to petition the court for a hearing prior to August 1, 2019, results in the waiver of the hearing and concession that the offender is entitled to parole eligibility.
- (3) For juvenile offenders sentenced to life imprisonment for first or second degree murder, whose conviction became final after the U.S. Supreme Court's decision in *Miller*, and who is eligible for parole consideration pursuant to present law (R.S. 15:574.4(E)), amends present law to decrease the number of years the offender is required to serve prior to becoming eligible for parole consideration from 35 years to 30 years of the sentence imposed.
- (4) Provides that the sole purpose of the sentencing hearing provided for in present law and proposed law (C.Cr.P. Art. 878.1) is to determine whether the juvenile offender's life sentence is to be imposed with or without parole eligibility or, for those persons whose convictions were final prior to the U.S. Supreme Court's decision in *Miller*, whether the offender is entitled to parole consideration. Further requires the court to state for the record the considerations taken into account and the factual basis for its determination.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 15:574.4(D)(1)(intro. para.) and (E)(1)(a) and C.Cr.P. Art. 878.1)