
DIGEST

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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)