

CONFERENCE COMMITTEE REPORT

SB 16

2017 Regular Session

Claitor

June 6, 2017

To the Honorable President and Members of the Senate and to the Honorable Speaker and Members of the House of Representatives.

Ladies and Gentlemen:

We, the conferees appointed to confer over the disagreement between the two houses concerning Senate Bill No. 16 by Senator Claitor, recommend the following concerning the Reengrossed bill:

1. That Legislative Bureau Amendment Nos. 1 and 2 proposed by the House Legislative Bureau and adopted by the House on May 15, 2017, be adopted.
2. That House Committee Amendment Nos. 1 through 4 proposed by the House Committee on Administration of Criminal Justice and adopted by the House on May 15, 2017, be adopted.
3. That House Floor Amendment Nos. 1 through 9 proposed by Representative Mack and adopted by the House on May 23, 2017, be rejected.
4. That House Floor Amendment Nos. 10 and 11 proposed by Representative Mack and adopted by the House on May 23, 2017, be adopted.
5. That the following amendments to the Reengrossed bill be adopted:

AMENDMENT NO. 1

In House Committee Amendment No. 4 proposed by the House Committee on Administration of Criminal Justice and adopted by the House on May 15, 2017, on page 4, line 18, after "relevant." delete the remainder of the line and insert "The admissibility of expert witness testimony in these matters shall be governed by Chapter 7 of the Code of Evidence." and at the beginning of line 19, delete "as required by the court."

Respectfully submitted,

Senators:

Representatives:

Senator Dan Claitor

Representative Sherman Mack

Senator Daniel "Danny" Martiny

Representative Tanner Magee

Senator Troy Carter

Representative John Stefanski

The legislative instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Alden A. Clement, Jr..

CONFERENCE COMMITTEE REPORT DIGEST

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Keyword and summary of the bill as proposed by the Conference Committee

JUVENILE JUSTICE. Provides relative to certain juveniles sentenced to life without parole. (8/1/17)

Report adopts House amendments to:

1. Delete the repeal of the present law provision relative to the judicial determination of whether a juvenile offender's sentence for first or second degree murder is to be imposed with or without parole eligibility.
2. Delete the repeal of the present law provision relative to the parole eligibility of juvenile offenders sentenced to life imprisonment for first or second degree murder.
3. Delete the provision that proposed law is effective upon signature of the governor or lapse of time for gubernatorial action.
4. Add provisions relative to parole eligibility for juvenile offenders convicted of first degree murder whose indictment is on or after 8/1/17.
5. Add provisions relative to parole eligibility for juvenile offenders convicted of second degree murder whose indictment is on or after 8/1/17.
6. Add provisions relative to parole eligibility for juvenile offenders convicted of first or second degree murder whose indictment was prior to 8/1/17.
7. Provide relative to the procedure for the judicial determination of whether a juvenile offender's life sentence is to be imposed with or without parole eligibility.
8. Provide that for juvenile offenders convicted of second degree murder whose indictment is on or after 8/1/17 a judicial determination of the offender's parole eligibility is not required.
9. Provide that, with regard to the hearing for the judicial determination of the offender's parole eligibility, expert testimony is only necessary as determined by the court, and for the sole purpose of the hearing to determine whether the sentence is to be imposed with or without parole eligibility.
10. Provide that the court is required to state for the record the considerations taken into account and the factual basis for its determination.
11. Change notice of intent by district attorney to seek life without parole from mandatory to discretionary.

Report rejects House amendments which would have:

1. Required offender to serve 30 years rather than 25 years before parole eligibility.

Report amends the bill to:

1. Provide that, with regard to the hearing to judicially determine the juvenile offender's parole eligibility, the admissibility of expert witness testimony is to be governed by present law (Code of Evidence).

Digest of the bill as proposed by the Conference Committee

Present law crimes of first degree rape (formerly aggravated rape) and aggravated kidnapping both carry a sentence of life imprisonment without benefit of parole.

In *Graham v. Florida*, 560 U.S. 48 (2010), the 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 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.

Proposed law decreases the amount of time the juvenile offender is required to serve prior to becoming parole eligible from 30 years of the sentence imposed to 25 years of the sentence imposed.

Proposed law otherwise retains present law.

Present law crimes of first degree murder and second degree murder carry a sentence of life imprisonment without benefit of parole.

In *Miller v. Alabama*, 567 U.S. ____ (2012), the 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 provides that a juvenile serving a sentence of life imprisonment for a conviction of first or second degree murder is eligible for parole consideration if a judicial determination has been made that the person is entitled to parole eligibility pursuant to present law and certain conditions are met, including the requirement that the person serve 35 years of the sentence imposed. Present law further 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 must be conducted prior to sentencing to determine whether the sentence is to be imposed with or without parole eligibility. These provisions of present law relative to juvenile sentences of life imprisonment for homicide offenses were applied only to persons whose conviction became final after the decision in *Miller*.

In *Montgomery v. Louisiana*, 577 U.S. ____ (2016), the Supreme Court held *Miller* applies retroactively to persons whose conviction became final prior to the *Miller* decision rendered on 6/25/12.

Proposed law provides:

- (1) If an offender is indicted on or after Aug. 1, 2017, for the crime of first degree murder where the offender was under the age of 18 years at the time of the commission of the offense, then the district attorney may file a notice of intent to seek a sentence of life imprisonment without the possibility of parole within 180 days after the indictment. If the district attorney timely files the notice of intent, a hearing must be conducted to determine whether the sentence is to be imposed with or without parole eligibility. If the court determines that the sentence is to be imposed without parole eligibility, then the defendant is not eligible for parole. If the court determines that the offender is eligible for parole or if the district attorney fails to timely file the notice of intent, then the offender will be eligible for parole pursuant to proposed law, which requires certain conditions to be met, including the condition that the offender is required to serve 25 years of the sentence imposed.
- (2) If an offender is indicted on or after 8/1/17 for the crime of second degree murder where the offender was under the age of 18 years at the time of the commission of the offense, then the offender is eligible for parole pursuant to present law, which requires certain conditions to be met, including the condition that the offender be required to serve 25 years of the sentence imposed.

- (3) If an offender was indicted prior to 8/1/17 for the crime of first or second degree murder where the offender was under the age of 18 at the time of the commission of the offense and a hearing was not held prior to 8/1/17 to determine whether the offender's sentence should be imposed with or without parole eligibility, then the district attorney may file a notice of intent to seek a sentence a life imprisonment without the possibility of parole within 90 days of Aug. 1, 2017. If the district attorney timely files the notice of intent, a hearing is to be conducted to determine whether the sentence is to be imposed with or without parole eligibility. If the court determines that the sentence is to be imposed without parole eligibility, then the offender is not eligible for parole. If the court determines that the sentence is to be imposed with parole eligibility or if the district attorney fails to timely file the notice of intent, then the offender will be eligible for parole pursuant to proposed law, which requires certain conditions to be met, including the condition that the offender serve 25 years of the sentence imposed.
- (4) If an offender was indicted prior to 8/1/17 for the crime of first or second degree murder where the offender was under the age of 18 years at the time of the commission of the offense and a hearing was held to determine whether the offender's sentence should be imposed with or without parole eligibility, then the following apply:
 - (a) If the court determined that the offender's sentence was to be imposed with parole eligibility, then the offender is eligible for parole pursuant to present law.
 - (b) If the court determined that the offender's sentence was to be imposed without parole eligibility, then the offender is not be eligible for parole.

Proposed law provides that, with regard to the hearing for the judicial determination as to the offender's parole eligibility:

- (1) The admissibility of expert witness testimony in these matters is to be governed by present law (Code of Evidence).
- (2) The sole purpose of the hearing is to determine whether the sentence will be imposed with or without parole eligibility.
- (3) The court must state for the record the considerations taken into account and the factual basis for its determination.

Effective August 1, 2017.

(Amends R.S. 15:574.4(D)(1)(a) and (2) and (E)(1)(intro. para.) and (a) and C.Cr.P. Art. 878.1; adds R.S. 15:574.4(F) and (G))