

RÉSUMÉ DIGEST

ACT 277 (SB 16)

2017 Regular Session

Claitor

Prior law crimes of first degree rape (formerly aggravated rape) and aggravated kidnapping both carried 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.

Prior law provided 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.

New 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. New law otherwise retains prior law.

Prior law crimes of first degree murder and second degree murder carried 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.

Prior law provided 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 prior law and certain conditions are met, including the requirement that the person serve 35 years of the sentence imposed. Prior law further provided 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 prior 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.

New 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 new 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 prior 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 new 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 prior 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.

New 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 prior 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))