

DIGEST

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SB 16 Reengrossed

2017 Regular Session

Claitor

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.

Proposed law retains present law but 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.

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) 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, the district attorney shall 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 shall be conducted to determine whether the sentence shall be imposed with or without parole eligibility. If the court determines that the sentence shall be imposed without parole eligibility, the defendant shall not be eligible for parole. If the court determines that the offender shall be eligible for parole or if the district attorney fails to timely file the notice of intent, the offender shall be eligible for parole pursuant to proposed law (R.S. 15:574.4(E)) which requires certain conditions to be met, including the condition that the offender be required to serve 25 years of the sentence imposed.

- (2) If an offender is indicted on or after Aug. 1, 2017, 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, the offender shall be eligible for parole pursuant to present law (R.S. 15:574.4(F)) 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 Aug. 1, 2017, 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 hearing was not held prior to Aug. 1, 2017, to determine whether the offender's sentence should be imposed with or without parole eligibility, the district attorney shall 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 shall be conducted to determine whether the sentence shall be imposed with or without parole eligibility. If the court determines that the sentence shall be imposed without parole eligibility, the offender shall not be eligible for parole. If the court determines that the sentence shall be imposed with parole eligibility or if the district attorney fails to timely file the notice of intent, the offender shall be eligible for parole pursuant to proposed law (R.S. 15:574.4(G)) which requires certain conditions to be met, including the condition that the offender be required to serve 25 years of the sentence imposed.
- (4) If an offender was indicted prior to Aug. 1, 2017, 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, the following shall apply:
 - (a) If the court determined that the offender's sentence shall be imposed with parole eligibility, the offender shall be eligible for parole pursuant to present law (R.S. 15:574.4(G)).
 - (b) If the court determined that the offender's sentence shall be imposed without parole eligibility, the offender shall not be eligible for parole.

With regard to the hearing for the judicial determination as to the offender's parole eligibility, proposed law amends present law to provide that:

- (1) Expert witness testimony is only necessary as required by the court.
- (2) The sole purpose of the hearing is to determine whether the sentence shall be imposed with or without parole eligibility.
- (3) Requires the court to state for the record the considerations taken into account and the factual basis for its determination.

(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))

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Repeals provision requiring a hearing before sentencing to determine whether the sentence will be imposed with or without parole eligibility.
2. Repeals provision providing for parole eligibility specifically for first degree murder and second degree murder offenses.
3. Removes the provisions providing retroactive application for parole eligibility.

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the reengrossed bill:

1. Retain present law with respect to parole eligibility for juvenile offenders sentenced to life imprisonment for non-homicide offenses except that it retains the provision of proposed law that decreased the amount of time such offenders are required to serve before becoming parole eligible from 30 years of the sentence imposed to 25 years of the sentence imposed.
2. 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.
3. Delete the repeal of the present law provision that provides relative to the parole eligibility of juvenile offender sentenced to life imprisonment for first or second degree murder.
4. Delete the provision that provided that proposed law shall be effective upon signature of the governor or lapse of time for gubernatorial action.
5. Add provisions that provides relative to parole eligibility for juvenile offenders convicted of first degree murder whose indictment for the offense is on or after Aug. 1, 2017; for juvenile offenders convicted of second degree murder whose indictment for the offense is on or after Aug. 1, 2017; and for juvenile offenders convicted of first or second degree murder whose indictment for the offense was prior to Aug. 1, 2017.
6. Provide relative to the procedure for the judicial determination of whether a juvenile offender's sentence is to be imposed with or without parole eligibility.
7. Provide that for juvenile offender's convicted of second degree murder whose indictment for the offense is on or after Aug. 1, 2017, a judicial determination of the offender's parole eligibility is not required.
8. With regard to the hearing for the judicial determination of the offender's parole eligibility, provide that expert testimony is only necessary as determined by the court, the sole purpose of the hearing is determine whether the sentence is to be imposed with or without parole eligibility, and the court is required to state for the record the considerations taken into account and the factual basis for its determination.