# WEST VIRGINIA CODE: §61-11-23

**§61-11-23. Punishment for juvenile convicted as an adult; eligibility for parole; factors to be considered prior to sentencing.**

(a) Notwithstanding any other provision of law to the contrary, a sentence of life imprisonment without the possibility of parole may not be imposed on a person who:

(1) Is convicted of an offense punishable by life imprisonment; and

(2) Was less than 18 years of age at the time the offense was committed.

(b) Unless otherwise provided by this code, the provisions of §62-12-1 et seq. of this code governs the eligibility for parole of a person who is convicted of an offense and sentenced to confinement if he or she was less than 18 years of age at the time the offense was committed, except that a person who is convicted of one or more offenses for which the sentence or any combination of sentences imposed is for a period that renders the person ineligible for parole until he or she has served more than 15 years shall be eligible for parole after he or she has served 15 years if the person was less than 18 years of age at the time each offense was committed.

(c) In addition to other factors required by law to be considered prior to the imposition of a sentence, in determining the appropriate sentence to be imposed on a person who has been transferred to the criminal jurisdiction of the court pursuant to §49-4-710 of this code and who has been subsequently tried and convicted of a felony offense as an adult, the court shall consider the following mitigating circumstances:

(1) Age at the time of the offense;

(2) Impetuosity;

(3) Family and community environment;

(4) Ability to appreciate the risks and consequences of the conduct;

(5) Intellectual capacity;

(6) The outcomes of a comprehensive mental health evaluation conducted by a mental health professional licensed to treat adolescents in the State of West Virginia: Provided, That no provision of this section may be construed to require that a comprehensive mental health evaluation be conducted;

(7) Peer or familial pressure;

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(8) Level of participation in the offense;

(9) Ability to participate meaningfully in his or her defense;

(10) Capacity for rehabilitation;

(11) School records and special education evaluations;

(12) Trauma history;

(13) Faith and community involvement;

(14) Involvement in the child welfare system; and

(15) Any other mitigating factor or circumstances.

(d)(1) Prior to the imposition of a sentence on a person who has been transferred to the criminal jurisdiction of the court pursuant to §49-4-710 of this code, and who has been subsequently tried and convicted of a felony offense as an adult, the court shall consider the outcomes of any comprehensive mental health evaluation conducted by an mental health professional licensed to treat adolescents in the State of West Virginia. The comprehensive mental health evaluation must include the following:

(A) Family interviews;

(B) Prenatal history;

(C) Developmental history;

(D) Medical history;

(E) History of treatment for substance use;

(F) Social history; and

(G) A psychological evaluation.

(2) The provisions of this subsection are only applicable to sentencing proceedings for convictions rendered after the effective date of this section and do not constitute sufficient grounds for the reconsideration of sentences imposed as the result of convictions rendered after the effective date of this section.

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