

FILED

2014 MAR 28 P 5:04

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
SECOND REGULAR SESSION, 2014

**ENROLLED**

COMMITTEE SUBSTITUTE  
FOR

**House Bill No. 4210**

(By Delegates Fleischauer, Skinner, Poore,  
Longstreth, Barill, Ellem, Sponaugle, Lynch,  
Manypenny, Hamilton and Pethtel)

Passed March 8, 2014

In effect ninety days from passage.

HB 4210

**FILED**

**2014 MAR 28 P 5: 04**

**OFFICE WEST VIRGINIA  
SECRETARY OF STATE**

**E N R O L L E D**

**COMMITTEE SUBSTITUTE**

**FOR**

**H. B. 4210**

---

**(BY DELEGATES FLEISCHAUER, SKINNER, POORE,  
LONGSTRETH, BARILL, ELLEM, SPONAUGLE, LYNCH,  
MANYPENNY, HAMILTON AND PETHTEL)**

---

**[Passed March 8, 2014; in effect ninety days from passage.]**

---

**AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-11-23; and to amend said code by adding thereto a new section, designated §62-12-13b, all relating to providing to eligibility for parole for persons who are convicted of criminal offenses where the person was less than eighteen years of age at the time the offense was committed, generally; prohibiting a sentence of life imprisonment without the possibility of parole upon such persons; requiring that persons who are convicted of offenses and the person was less than eighteen years of age at the time the offenses were committed shall be eligible for parole after he or she has served fifteen years; requiring**

FILED

40 9 9  
AUG 27 1931  
STATE OF WEST VIRGINIA  
certain factors to be considered by court when sentencing such persons convicted after transfer to the criminal jurisdiction of the court; and requiring certain factors to be considered by the parole board when considering the eligibility for parole of a person sentenced after transfer to the criminal jurisdiction of a court.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-11-23; and that said code be amended by adding thereto a new section, designated §62-12-13b, all to read as follows:

**CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

**ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.**

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

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

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

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

8 (b) Unless otherwise provided by this code, the provisions of  
9 article twelve, chapter sixty-two of this code shall govern the  
10 eligibility for parole of a person who is convicted of an offense  
11 and sentenced to confinement if he or she was less than eighteen  
12 years of age at the time the offense was committed, except that  
13 a person who is convicted of one or more offenses for which the  
14 sentence or any combination of sentences imposed is for a period  
15 that renders the person ineligible for parole until he or she has

16 served more than fifteen years shall be eligible for parole after  
17 he or she has served fifteen years if the person was less than  
18 eighteen years of age at the time each offense was committed.

19 (c) In addition to other factors required by law to be  
20 considered prior to the imposition of a sentence, in determining  
21 the appropriate sentence to be imposed on a person who has been  
22 transferred to the criminal jurisdiction of the court pursuant to  
23 section ten, article five, chapter forty-nine of this code and who  
24 has been subsequently tried and convicted of a felony offense as  
25 an adult, the court shall consider the following mitigating  
26 circumstances:

27 (1) Age at the time of the offense;

28 (2) Impetuosity;

29 (3) Family and community environment;

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

32 (5) Intellectual capacity;

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

38 (7) Peer or familial pressure;

39 (8) Level of participation in the offense;

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

41 (10) Capacity for rehabilitation;

42 (11) School records and special education evaluations;

- 43 (12) Trauma history;
- 44 (13) Faith and community involvement;
- 45 (14) Involvement in the child welfare system; and
- 46 (15) Any other mitigating factor or circumstances.

47 (d)(1) Prior to the imposition of a sentence on a person who  
48 has been transferred to the criminal jurisdiction of the court  
49 pursuant to section ten, article five, chapter forty-nine of this  
50 code and who has been subsequently tried and convicted of an  
51 felony offense as an adult, the court shall consider the outcomes  
52 of any comprehensive mental health evaluation conducted by an  
53 mental health professional licensed to treat adolescents in the  
54 State of West Virginia. The comprehensive mental health  
55 evaluation must include the following:

- 56 (A) Family interviews;
- 57 (B) Prenatal history;
- 58 (C) Developmental history;
- 59 (D) Medical history;
- 60 (E) History of treatment for substance use;
- 61 (F) Social history; and
- 62 (G) A psychological evaluation.

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

**CHAPTER 62. CRIMINAL PROCEDURE.**

**ARTICLE 12. PROBATION AND PAROLE.**

**§62-12-13b. Special parole considerations for persons convicted as juveniles.**

1           (a) When a person who is serving a sentence imposed as the  
2 result of an offense or offenses committed when he or she was  
3 less than eighteen years of age becomes eligible for parole  
4 pursuant to applicable provisions of this code, including, but not  
5 limited to, section twenty-three, article eleven, chapter sixty-one  
6 thereof, the parole board shall ensure that the procedures  
7 governing its consideration of the person's application for parole  
8 ensure that he or she is provided a meaningful opportunity to  
9 obtain release and shall adopt rules and guidelines to do so that  
10 are consistent with existing case law.

11           (b) During a parole hearing involving a person described in  
12 subsection (a) of this section, in addition to other factors  
13 required by law to be considered by the parole board, the parole  
14 board shall take into consideration the diminished culpability of  
15 juveniles as compared to that of adults, the hallmark features of  
16 youth, and any subsequent growth and increased maturity of the  
17 prisoner during incarceration. The board shall also consider the  
18 following:

19           (1) A review of educational and court documents;

20           (2) Participation in available rehabilitative and educational  
21 programs while in prison;

22           (3) Age at the time of the offense;

23           (4) Immaturity at the time of the offense;

24           (5) Home and community environment at the time of the  
25 offense;

**Enr. Com. Sub. For H. B. No. 4210] 6**

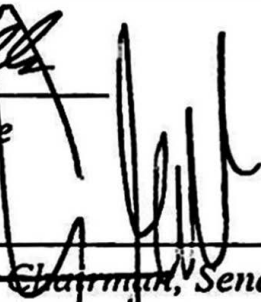
**26 (6) Efforts made toward rehabilitation;**

**27 (7) Evidence of remorse; and**

**28 (8) Any other factors or circumstances the board considers**  
**29 relevant.**

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

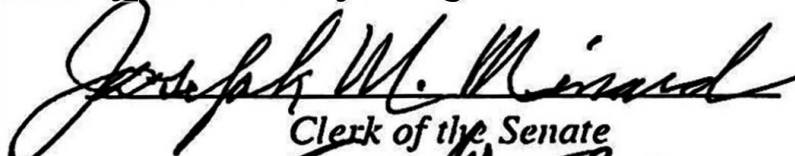
  
\_\_\_\_\_  
Chairman, House Committee

  
\_\_\_\_\_  
Member ~~Chairman~~, Senate Committee

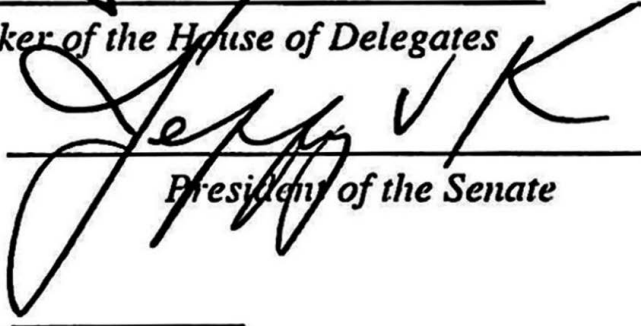
Originating in the House.

In effect ninety days from passage.

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

The within is approved this the 28th  
day of March, 2014.

  
\_\_\_\_\_  
Governor



PRESENTED TO THE GOVERNOR

MAR 28 2017

Time 10:45 AM