

1 ENGROSSED HOUSE
2 BILL NO. 1449

By: Lepak and Virgin of the
House

3 and

4 Bice of the Senate

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6
7 [crimes and punishments - directing courts to
8 consider mitigating circumstances when determining
9 sentences of certain persons - effective date]
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12 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

13 SECTION 1. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 69 of Title 21, unless there is
15 created a duplication in numbering, reads as follows:

16 A. When determining whether to impose a sentence of life
17 imprisonment without the possibility of parole on a person convicted
18 of first-degree murder who was less than eighteen (18) years of age
19 at the time of the commission of the crime, the court shall consider
20 the following mitigating circumstances:

21 1. Age at the time of the offense;

22 2. Immaturity, impetuosity and the ability to appreciate the
23 risks and consequences of the conduct;

24 3. Family and community environment;

- 1 4. Intellectual capacity;
- 2 5. Peer or familial pressure;
- 3 6. Level of participation in the offense;
- 4 7. Ability to participate meaningfully in his or her defense;
- 5 8. Capacity for rehabilitation;
- 6 9. School records and special education evaluations;
- 7 10. Trauma history;
- 8 11. Faith and community involvement;
- 9 12. Involvement in the child welfare system; and
- 10 13. Any other factors or circumstances the court deems
- 11 relevant.

12 B. Only after examining the factors outlined in subsection A of
13 this section, and finding beyond a reasonable doubt that the
14 defendant is a permanently incorrigible juvenile who is beyond
15 rehabilitation, may the court impose a sentence of life without
16 parole.

17 C. If the defendant invokes his or her right to jury
18 sentencing, the finding by the jury under subsection B of this
19 section must be unanimous.

20 D. A person who was under eighteen (18) years of age at the
21 time of the offense and sentenced to life without parole for first-
22 degree murder pursuant to the provisions of this section shall have
23 the right to judicial review of his or her sentence as provided in
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1 Section 2 of this act after serving thirty (30) calendar years of
2 imprisonment.

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 70 of Title 21, unless there is
5 created a duplication in numbering, reads as follows:

6 A. Notwithstanding any other provision of law to the contrary,
7 a court may reduce a sentence of life without parole imposed on a
8 defendant who was convicted of first-degree murder and who committed
9 the offense before the person was eighteen (18) years of age, if:

10 1. The defendant has served at least thirty (30) calendar years
11 of imprisonment;

12 2. The defendant filed a motion for reduction in sentence; and

13 3. The court finds, after considering the factors set forth in
14 subsection C of this section, that the defendant is not a danger to
15 the safety of any person or to the community and that the interests
16 of justice warrant a sentence modification.

17 B. A defendant whose sentence is reduced under the provisions
18 of this section must be ordered to serve a period of supervised
19 release of at least five (5) years upon release from imprisonment.

20 C. When determining whether to reduce a term of imprisonment
21 under this section, the court shall consider:

22 1. The nature of the offense committed by the defendant;

23 2. The age of the defendant at the time of the offense;

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1 3. A report and recommendation from the Department of
2 Corrections including information relating to the ability of the
3 defendant to comply with the rules of the institution and whether
4 the defendant completed any available educational, vocational or
5 other prison programming;

6 4. A report and recommendation from the district attorney for
7 the county in which the defendant was prosecuted;

8 5. Whether the defendant has demonstrated maturity,
9 rehabilitation and a fitness to reenter society sufficient to
10 justify a sentence reduction;

11 6. A statement by a victim or a family member of a victim who
12 was impacted by the actions of the defendant;

13 7. The family of the defendant and community circumstances at
14 the time of the offense including any history of abuse, trauma or
15 involvement in the child welfare system;

16 8. The diminished culpability of juveniles compared to adults,
17 the hallmark features of youth including immaturity, impetuosity and
18 failure to appreciate risks and consequences which counsel against
19 sentencing juveniles to life without parole; and

20 9. Any additional information the court determines relevant.

21 D. A defendant may make a second motion for a reduction in
22 sentence under this section no earlier than five (5) years after the
23 initial motion for reduction.

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1 E. A defendant may make a third and final motion for a
2 reduction in sentence no earlier than five (5) years after the order
3 for a second motion was filed. If the motion is denied, no further
4 motions shall be entertained by the court.

5 F. The Department of Corrections shall provide written notice
6 of this section and its procedures to:

7 1. Any defendant who was sentenced to life without parole for
8 first-degree murder who was less than eighteen (18) years of age at
9 the time of the offense and has served twenty-nine (29) years in
10 prison; and

11 2. The district attorney in the county where the defendant was
12 prosecuted and sentenced.

13 G. An application for a sentence reduction under this section
14 shall be filed as a motion to reduce the sentence of the defendant
15 and may include affidavits or other written material. The motion
16 shall be filed with the sentencing court and a copy shall be served
17 on the district attorney for the county in which the sentence was
18 imposed.

19 H. The court shall conduct a hearing on the motion at which
20 time the defendant and counsel for the defendant shall be given the
21 opportunity to be heard. In a hearing under this section, the court
22 may allow for parties to present evidence. The court shall state in
23 open court and file in writing the reasons for granting or denying a
24 motion under this section.

1 I. Notwithstanding any provision of law to the contrary, if the
2 court grants a motion under this section, the court may reduce the
3 sentence of life without parole to life with the possibility of
4 parole.

5 J. The hearing under this section shall assess whether the
6 defendant has shown signs of rehabilitation, such that life without
7 parole is no longer a permissible sentence under the Constitution of
8 the United States.

9 SECTION 3. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 332.7b of Title 57, unless there
11 is created a duplication in numbering, reads as follows:

12 A. 1. Notwithstanding any other provision of law to the
13 contrary, the following persons are eligible for release on parole:

14 a. a person who was convicted and sentenced for any
15 offenses in which the death of another person did not
16 occur, and the offenses were committed before, on or
17 after November 1, 2019, but before the person was
18 eighteen (18) years of age, shall be retroactively
19 eligible for release on parole after the person has
20 served twenty (20) years of incarceration, unless by
21 law the person is eligible for earlier parole
22 eligibility, or

23 b. a person who was convicted and sentenced for any
24 offenses in which the death of another person

1 occurred, and the offenses were committed before, on
2 or after November 1, 2019, but before the person was
3 eighteen (18) years of age, is eligible for release on
4 parole after the person has served twenty-five (25)
5 years of incarceration, unless by law the person is
6 eligible for earlier parole eligibility.

7 2. The provisions of subparagraph b of paragraph 1 of this
8 subsection shall apply prospectively only to defendants sentenced on
9 or after November 1, 2019; provided, however, the parole eligibility
10 provisions of this section shall not apply to any person sentenced
11 to life without the possibility of parole, unless a judge later
12 modifies his or her sentence under the provisions of Section 2 of
13 this act to life with the possibility of parole.

14 B. Notwithstanding any other provision of law to the contrary,
15 including paragraph 2 of subsection A of this section, a person who
16 was sentenced to life without the possibility of parole before
17 November 1, 2019, for first-degree murder that was committed before
18 the person was eighteen (18) years of age, shall be retroactively
19 eligible for release on parole after the person has served thirty-
20 five (35) years of incarceration.

21 C. The provisions of this section apply regardless of any
22 mandatory minimums, sentencing enhancements or sentences ordered to
23 be served consecutively or concurrently.

1 D. The Governor and Pardon and Parole Board shall ensure that a
2 hearing to consider the parole eligibility of a person under this
3 section takes into account how a juvenile offender is different from
4 an adult offender and provides the person with a meaningful
5 opportunity to be released on parole based on demonstrated maturity
6 and rehabilitation.

7 E. During a parole hearing involving a person under the
8 provisions of this section, the Board shall take into consideration
9 in addition to other factors required by law to be considered by the
10 Board, the following:

11 1. The diminished culpability of children as compared to that
12 of adults;

13 2. The hallmark features of youth;

14 3. Subsequent growth and increased maturity of the person
15 during incarceration;

16 4. Age of the person at the time of the offense;

17 5. Immaturity of the person at the time of the offense;

18 6. The family of the person and community circumstances at the
19 time of the offense, including any history of abuse, trauma and
20 involvement in the child welfare system;

21 7. The participation of the person in available rehabilitative
22 and educational programs while in prison, if those programs have
23 been made available, or use of self-study for self-improvement;

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1 8. Any statement made by a victim or family member of a victim;
2 and

3 9. Other factors the Board deems relevant.

4 F. A person eligible for parole under this section may have an
5 attorney present to represent him or her at the parole eligibility
6 hearing.

7 SECTION 4. This act shall become effective November 1, 2019.

8 Passed the House of Representatives the 7th day of March, 2019.

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Presiding Officer of the House
of Representatives

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Passed the Senate the ___ day of _____, 2019.

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Presiding Officer of the Senate

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