

HOUSE BILL 2028

By Faison

AN ACT to amend Tennessee Code Annotated, Title 40,  
relative to sentencing juveniles convicted in  
criminal court.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 40, is amended by adding the following  
as a new chapter 40:

**40-40-101.**

(a) 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 was less than eighteen (18) years of age at the time of the offense, and has  
been tried and convicted as an adult, the court shall consider the following mitigating  
circumstances:

- (1) Age at the time of the offense;
- (2) Level of participation in the offense and whether and to what extent  
an adult was involved in the offense;
- (3) Impulsivity and immaturity;
- (4) Family and community environment;
- (5) Ability to appreciate the risks and consequences of the conduct;
- (6) Intellectual capacity;
- (7) The outcomes, if available, of a comprehensive mental health  
evaluation conducted by an adolescent mental health professional licensed in the  
state of Tennessee, which includes family interviews, prenatal history,

developmental history, social history, medical history, and a psychological evaluation;

- (8) Peer or familial pressure;
- (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) Emotional, psychological, or physical maturity;
- (14) Faith and community involvement;
- (15) Involvement in the child welfare system; and
- (16) Any other mitigating factor or circumstance.

**40-40-102.**

(a) Notwithstanding any other law to the contrary, a court may reduce any term of imprisonment imposed upon a defendant convicted as an adult for crimes committed prior to the defendant's eighteenth birthday to time served or any other sentence the court feels appropriate so long as it is less than the sentence originally imposed. The court may impose a reduced sentence even if the new sentence departs from the statutory minimum sentence for the original charges, if:

(1) The defendant has served fifteen (15) calendar years in prison for offenses of which the defendant was convicted as an adult and that were committed and completed prior to the defendant's eighteenth birthday; and

(2) The court finds, after considering the factors set forth in subsection (b), that the defendant does not pose an unreasonable risk of danger to the safety of any person or the community and that the interests of justice warrant a sentence modification.

(b) The court, in determining whether to reduce a term of imprisonment pursuant to subsection (a), shall consider:

- (1) The defendant's age at the time of the crime;
- (2) Information from the department of correction as to whether the defendant has substantially complied with the rules of the institution or institutions to which he or she has been confined since reaching twenty-three (23) years of age and whether the defendant has completed any educational, vocational, or other prison program, where available;
- (3) A recommendation of the district attorney in any district where the crimes were prosecuted;
- (4) Any statement, oral or otherwise, provided by the victim or the victim's family if the victim is deceased or a previously submitted victim impact statement or affidavit if the victim or victim's family chooses to submit either for the court to review;
- (5) Whether the defendant has demonstrated maturity, rehabilitation, and a fitness to reenter society sufficient to justify a sentence reduction;
- (6) Any reports of physical, mental or psychiatric examination of the defendant conducted by licensed health care professionals;
- (7) The defendant's family and community circumstances at the time of the offense, including any history of abuse, trauma, or involvement in the child welfare system or additional adverse childhood experiences;
- (8) The extent of the defendant's role in the crime and whether and to what extent an adult was involved;
- (9) The diminished culpability of juveniles as compared to that of adults, the substantial increase in brain development between youth and adulthood, and the hallmark features of youth, including immaturity,

impetuosity, and failure to appreciate risks and consequences, which counsel against sentencing them to the otherwise applicable term of imprisonment; and

(10) Any other information the court deems relevant to its decision.

(c) A court shall entertain subsequent petitions pursuant to this section, but no sooner than five (5) years following the date that the order on the previous petition becomes final. If a sentence has not been reduced after a third petition, a court shall entertain a fourth and final petition pursuant to this section, no sooner than five (5) years following the date that the order on the third petition becomes final. No court shall entertain a fifth or successive petition pursuant to this section.

(d) The department of correction shall provide written notice of this section and its procedures to any defendant who has served fourteen (14) calendar years in prison for crimes for which the defendant was convicted as an adult and that were committed and completed prior to the defendant's eighteenth birthday. The department shall simultaneously provide notice to the district attorney general and public defender in the jurisdiction in which the sentence was imposed.

(e) A defendant may file a petition for a sentence reduction under this section. The petition must be in the form of a motion to reduce the sentence. The petition may include affidavits or other written material. The petition shall be filed with the sentencing court and a copy shall be served on the district attorney general in the jurisdiction in which the sentence was imposed.

(f) The court may direct the parties to expand the record by submitting additional written materials related to the motion. The court must hold a hearing on the motion at

which the defendant and the defendant's counsel must be given an opportunity to speak on the defendant's behalf. The court may permit the parties to introduce evidence.

(g) The defendant must be present at any hearing conducted under this section unless the defendant waives the right to be present. Any proceeding under this section may occur by video teleconferencing and the requirement of a defendant's presence is satisfied by participation in the video teleconference.

(h) A defendant who is unable to obtain counsel is entitled to have counsel appointed to represent the defendant for proceedings under this section, including any appeal unless the defendant waives this right.

(i) The court shall state in open court, and shall file in writing, the reasons for granting or denying the petition under this section.

(j) The district attorney general or the defendant may file a notice of appeal for review of a final order under this section.

(k) Any victim of the crime for which the defendant is imprisoned or a family member of the victim if the victim is deceased, shall retain all rights provided by law, including the right to participate in the hearing by oral or written statement pursuant to subdivision (b)(4). The victim shall be given the option of participating in the hearing by video conference if available in the jurisdiction. The district attorney general shall provide the victim with a copy of the defendant's petition prior to the hearing at the victim's request. The victim may also request to participate in a victim/offender dialogue with the defendant through the department of correction, and shall be provided with an opportunity to participate in such dialogue prior to the hearing if practicable.

(l) If the court reduces the defendant's sentence to a term of imprisonment that remains to be served, § 40-35-501 shall govern the defendant's eligibility for release on parole from the new sentence imposed.

(m) No prisoner convicted and sentenced as an adult for crimes committed prior to the defendant's eighteenth birthday shall be deprived of any educational, training, or rehabilitative program which is otherwise available to the general prison population.

(n) The provisions of this section shall have retroactive application and any inmate who has served more than fifteen (15) calendar years in prison for crimes committed before they reached their eighteenth birthday may file a petition in accordance with this section, including those serving sentences of imprisonment for life without the possibility of parole or imprisonment for life with the possibility of parole, notwithstanding any other law to the contrary.

**40-40-103.**

A sentence of imprisonment for life without possibility of parole shall not be imposed or inflicted upon any person convicted of crimes punishable by imprisonment for life without possibility of parole who at the time of the commission of the crimes was less than eighteen (18) years of age. As to such a person, the maximum punishment that may be imposed is imprisonment for life with the possibility of parole.

SECTION 2. This act shall take effect on July 1, 2016, the public welfare requiring it.