

SENATE BILL 2213

By Bowling

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

WHEREAS, the General Assembly acknowledges and recognizes a significant distinction in the brain development of youthful offenders and juveniles compared to adults, and that minors are constitutionally and categorically different from adults and that these differences must be taken into account when minors are sentenced for adult crimes. As the United States Supreme Court quoted in *Miller v. Alabama*, 132 S.Ct. 2455 (2012), "only a relatively small proportion of adolescents" who engage in illegal activity "develop entrenched patterns of problem behavior," and "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds," including "parts of the brain involved in behavior control". Minors are more vulnerable to negative influences and outside pressures, including from their family and peers, and they have limited control over their own environment and lack the ability to extricate themselves from horrific crime-producing settings. The United States Supreme Court has emphasized through its cases in *Miller*, *Roper v. Simmons*, 543 U.S. 551 (2005), and *Graham v. Florida*, 560 U.S. 48 (2010), that "the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes". Youthfulness both lessens a juvenile's moral culpability and enhances the prospect that, as a youth matures into an adult and neurological development occurs, these individuals can become contributing members of society; and

WHEREAS, it is the intent of the General Assembly to eliminate life without parole as a sentencing option for minors and to create more age-appropriate sentencing standards in

compliance with the United States Constitution for minors who commit serious crimes; now, therefore,

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 new chapter:

40-40-101.

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 or offenses and has been tried and convicted as an adult, the court shall consider the following mitigating circumstances with respect to such person:

- (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) The relationship between any abuse, neglect, or exploitation of the juvenile and the commission of the offense;
- (4) Impulsivity and immaturity of the juvenile;
- (5) Family and community environment;
- (6) Ability to appreciate the risks and consequences of the conduct;
- (7) Intellectual capacity;
- (8) The outcomes, if available, of a comprehensive mental health evaluation conducted by an adolescent mental health professional licensed in this state, which includes family interviews, prenatal history, developmental history, social history, medical history, and a psychological evaluation;
- (9) Peer or familial pressure;
- (10) Ability to participate meaningfully in the juvenile's defense;
- (11) Capacity for rehabilitation;
- (12) School records and special education evaluations;

- (13) Trauma history, including any adverse childhood experiences;
- (14) Emotional, psychological, or physical maturity;
- (15) Faith and community involvement;
- (16) Involvement in the child welfare system; and
- (17) Any other mitigating factor or circumstance.

40-40-102.

(a) Notwithstanding any law to the contrary, unless an inmate is subject to earlier eligibility for parole pursuant to any other law, an inmate who was sentenced as an adult for an offense or offenses that were committed when the inmate was less than eighteen (18) years of age is eligible for release on parole as provided in this section. An inmate serving a period of incarceration for having been convicted of an offense or offenses, regardless of the original sentences that were imposed, including any applicable sentencing enhancements, is eligible for release on parole from all offenses after the inmate has served fifteen (15) years of incarceration, including any time served in a county jail or juvenile facility.

(b) During a parole hearing involving an inmate who was less than eighteen (18) years of age at the time of the offense or offenses, in addition to other factors required by law to be considered by the board of parole, the board of parole shall take into consideration the following:

- (1) The inmate's age and maturity at the time of the offense or offenses;
- (2) Educational and court documents related to the offense or offenses;
- (3) Information from the department of correction as to whether the inmate has substantially complied with the rules of the institution or institutions to which the inmate has been confined since reaching twenty-one (21) years of age,

and whether the inmate has completed any educational, vocational, or other prison program, where available;

(4) Whether the inmate has demonstrated maturity, rehabilitation, and a fitness to reenter society sufficient to justify a sentence reduction;

(5) Any reports of physical, mental, or psychiatric examination of the inmate conducted by licensed healthcare professionals and evidence that the inmate does not pose an unreasonable danger to the safety of any person or the community and that the interests of justice warrant that the inmate be granted parole;

(6) The inmate'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;

(7) The mitigating circumstances listed in § 40-40-101; and

(8) Any other factors or circumstances the board of parole considers relevant.

(c) This section has retroactive application. Any inmate who has pled to or been convicted of an offense and been sentenced to longer than fifteen (15) years in prison for a crime or crimes committed before the inmate reached eighteen (18) years of age is eligible for parole 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.

SECTION 2. This act shall take effect July 1, 2020, the public welfare requiring it.