

1 **ENROLLED**

2 **COMMITTEE SUBSTITUTE**

3 **FOR**

4 **H. B. 4210**

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

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

9
10 AN ACT to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new section, designated §61-11-23; and to
12 amend said code by adding thereto a new section, designated
13 §62-12-13b, all relating to providing to eligibility for
14 parole for persons who are convicted of criminal offenses
15 where the person was less than eighteen years of age at the
16 time the offense was committed, generally; prohibiting a
17 sentence of life imprisonment without the possibility of
18 parole upon such persons; requiring that persons who are
19 convicted of offenses and the person was less than eighteen
20 years of age at the time the offenses were committed shall be
21 eligible for parole after he or she has served fifteen years;
22 requiring certain factors to be considered by court when
23 sentencing such persons convicted after transfer to the
24 criminal jurisdiction of the court; and requiring certain
25 factors to be considered by the parole board when considering
26 the eligibility for parole of a person sentenced after

1 transfer to the criminal jurisdiction of a court.

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

3 That the Code of West Virginia, 1931, as amended, be amended
4 by adding thereto a new section, designated §61-11-23; and that
5 said code be amended by adding thereto a new section, designated
6 §62-12-13b, all to read as follows:

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

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

9 **§61-11-23 Punishment for juvenile convicted as an adult;**
10 **eligibility for parole; factors to be considered**
11 **prior to sentencing.**

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

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

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

19 (b) Unless otherwise provided by this code, the provisions of
20 article twelve, chapter sixty-two of this code shall govern the
21 eligibility for parole of a person who is convicted of an offense
22 and sentenced to confinement if he or she was less than eighteen
23 years of age at the time the offense was committed, except that a
24 person who is convicted of one or more offenses for which the
25 sentence or any combination of sentences imposed is for a period

1 that renders the person ineligible for parole until he or she has
2 served more than fifteen years shall be eligible for parole after
3 he or she has served fifteen years if the person was less than
4 eighteen years of age at the time each offense was committed.

5 (c) In addition to other factors required by law to be
6 considered prior to the imposition of a sentence, in determining
7 the appropriate sentence to be imposed on a person who has been
8 transferred to the criminal jurisdiction of the court pursuant to
9 section ten, article five, chapter forty-nine of this code and who
10 has been subsequently tried and convicted of a felony offense as an
11 adult, the court shall consider the following mitigating
12 circumstances:

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

14 (2) Impetuosity;

15 (3) Family and community environment;

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

18 (5) Intellectual capacity;

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

24 (7) Peer or familial pressure;

25 (8) Level of participation in the offense;

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

- 1 (10) Capacity for rehabilitation;
- 2 (11) School records and special education evaluations;
- 3 (12) Trauma history;
- 4 (13) Faith and community involvement;
- 5 (14) Involvement in the child welfare system; and
- 6 (15) Any other mitigating factor or circumstances.

7 (d) (1) Prior to the imposition of a sentence on a person who
8 has been transferred to the criminal jurisdiction of the court
9 pursuant to section ten, article five, chapter forty-nine of this
10 code and who has been subsequently tried and convicted of an felony
11 offense as an adult, the court shall consider the outcomes of any
12 comprehensive mental health evaluation conducted by an mental
13 health professional licensed to treat adolescents in the State of
14 West Virginia. The comprehensive mental health evaluation must
15 include the following:

- 16 (A) Family interviews;
- 17 (B) Prenatal history;
- 18 (C) Developmental history;
- 19 (D) Medical history;
- 20 (E) History of treatment for substance use;
- 21 (F) Social history; and
- 22 (G) A psychological evaluation.

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

1 convictions rendered after the effective date of this section.

2 **CHAPTER 62. CRIMINAL PROCEDURE.**

3 **ARTICLE 12. PROBATION AND PAROLE.**

4 **§62-12-13b. Special parole considerations for persons convicted**
5 **as juveniles.**

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

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

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

25 (2) Participation in available rehabilitative and educational

1 programs while in prison;

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

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

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

5 (6) Efforts made toward rehabilitation;

6 (7) Evidence of remorse; and

7 (8) Any other factors or circumstances the board considers

8 relevant.