

Senate Bill No. 370

(By Senator Palumbo)

[Introduced January 16, 2014; referred to the Committee on the
Judiciary.]

10 A BILL to amend and reenact §61-2-14a of the Code of West Virginia,
11 1931, as amended; to amend and reenact §62-3-15 of said code;
12 to amend said code by adding thereto a new section, designated
13 §62-3-22; and to amend said code by adding thereto a new
14 section, designated §62-12-13b, all relating to sentencing
15 juveniles treated as adults in the criminal justice system;
16 requiring that juveniles treated as adults who are convicted
17 of kidnapping or first degree murder and sentenced to life in
18 prison be given mercy and the associated parole review;
19 stating legislative findings; providing special parole review
20 for juveniles convicted of a crime as an adult; requiring the
21 Parole Board to address certain factors before determining
22 whether a convicted juvenile should receive parole; and
23 requiring that all juveniles convicted as adults be reviewed
24 for parole eligibility no later than after having served

1 fifteen years.

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

3 That §61-2-14a of the Code of West Virginia, 1931, as amended,
4 be amended and reenacted; that §62-3-15 of said code be amended and
5 reenacted; that said code be amended by adding thereto a new
6 section, designated §62-3-22; and that said code be amended by
7 adding thereto a new section, designated §62-12-13b, all to read as
8 follows:

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

10 **ARTICLE 2. CRIMES AGAINST THE PERSON.**

11 **§61-2-14a. Kidnaping; penalty.**

12 (a) Any person who unlawfully restrains another person with
13 the intent:

14 (1) To hold another person for ransom, reward, or concession;

15 (2) To transport another person with the intent to inflict
16 bodily injury or to terrorize the victim or another person; or

17 (3) To use another person as a shield or hostage, ~~shall be~~ is
18 guilty of a felony and, upon conviction, shall be punished by
19 confinement by the division of corrections for life, and,
20 notwithstanding the provisions of article twelve, chapter sixty-two
21 of this code, ~~shall~~ is not be eligible for parole.

22 (b) The following exceptions ~~shall~~ apply to the penalty
23 contained in subsection (a):

1 (1) The court shall add a recommendation of mercy if the
2 person convicted was under the age of eighteen at the time the
3 offense was committed and the A jury may, in ~~their~~ its discretion,
4 recommend mercy if the convicted person was age eighteen or older
5 at the time the offense was committed. ~~and if such~~ If the
6 recommendation is added to ~~their~~ its verdict, ~~such~~ the convicted
7 person ~~shall be~~ is eligible for parole in accordance with the
8 provisions of ~~said~~ article twelve, chapter sixty-two of this code;

9 (2) If ~~such~~ the person pleads guilty, the court may, in its
10 discretion, provide that ~~such~~ the person ~~shall be~~ is eligible for
11 parole in accordance with the provisions of ~~said~~ article twelve of
12 this chapter, and, if the court so provides, ~~such~~ the person ~~shall~~
13 ~~be~~ is eligible for parole in accordance with the provisions of ~~said~~
14 article twelve of this chapter in the same manner ~~and with like~~
15 ~~effect~~ as if such person had been found guilty by the verdict of a
16 jury and the jury had recommended mercy;

17 (3) In all cases where the person against whom the offense is
18 committed is returned, or is permitted to return, alive, without
19 bodily harm having been inflicted upon him or her, but after
20 ransom, money or other thing, or any concession or advantage of any
21 sort has been paid or yielded, the punishment ~~shall be~~ is
22 confinement by the division of corrections for a definite term of
23 years not less than twenty nor more than fifty; or

24 (4) In all cases where the person against whom the offense is

1 committed is returned, or is permitted to return, alive, without
2 bodily harm having been inflicted upon him or her, but without
3 ransom, money or other thing, or any concession or advantage of any
4 sort having been paid or yielded, the punishment ~~shall be~~ is
5 confinement by the Division of Corrections for a definite term of
6 years not less than ten nor more than thirty.

7 (c) For purposes of this section: "To use another as a
8 hostage" means to seize or detain and threaten to kill or injure
9 another in order to compel a third person or a governmental
10 organization to do or abstain from doing any legal act as an
11 explicit or implicit condition for the release of the person
12 detained.

13 (d) Notwithstanding any other provision of this section, if a
14 violation of this section is committed by a family member of a
15 minor abducted or held hostage and he or she is not motivated by
16 monetary purposes, but rather intends to conceal, take, remove the
17 child or refuse to return the child to his or her lawful guardian
18 in the belief, mistaken or not, that it is in the child's interest
19 to do so, he or she ~~shall be~~ is guilty of a felony and, upon
20 conviction thereof, shall be confined in a correctional facility
21 for not less than one or more than five years or fined not more
22 than \$1,000, or both.

23 (e) Notwithstanding any provision of this code to the
24 contrary, where a law-enforcement agency of this state or a

1 political subdivision thereof receives a complaint that a violation
 2 of the provisions of this section has occurred, the receiving
 3 law-enforcement agency shall notify any other law-enforcement
 4 agency with jurisdiction over the offense, including, but not
 5 limited to, the state police and each agency so notified, and shall
 6 also cooperate in the investigation. ~~forthwith.~~

7 (f) It shall be a defense to a violation of subsection (d) of
 8 this section, that the accused's action was necessary to preserve
 9 the welfare of the minor child and the accused promptly reported
 10 his or her actions to a person with lawful custody of the minor, to
 11 law-enforcement or to Child Protective Services division of the
 12 Department of Health and Human Resources.

13 **CHAPTER 62. CRIMINAL PROCEDURE.**

14 **ARTICLE 3. TRIAL OF CRIMINAL CASES.**

15 **§62-3-15. Verdict and sentence in murder cases.**

16 If a person indicted for murder ~~be~~ is found guilty by the jury
 17 ~~guilty thereof, they~~ it shall in ~~their~~ its verdict find whether he
 18 or she is guilty of murder of the first degree or second degree.
 19 If the person indicted for murder is found guilty by the jury
 20 ~~guilty thereof, and~~ if the jury find in ~~their~~ its verdict that he
 21 or she is guilty of murder of the first degree, or if a person
 22 indicted for murder pleads guilty of murder of the first degree, he
 23 or she shall be punished by imprisonment in ~~the penitentiary a~~
 24 correctional facility for life, and he or she, notwithstanding the

1 provisions of article twelve of this chapter, ~~sixty-two of this~~
2 ~~code shall not be eligible~~ is ineligible for parole: *Provided,*
3 That the court shall add a recommendation of mercy if the convicted
4 person was under the age of eighteen at the time the murder was
5 committed and the jury may, in ~~their~~ its discretion, recommend
6 mercy if the convicted person was aged eighteen or older at the
7 time the murder was committed, and if ~~such a~~ a recommendation is
8 added to ~~their~~ its verdict, ~~such the~~ the person ~~shall be~~ is eligible
9 for parole in accordance with the provisions of ~~said~~ article twelve
10 of this chapter, except that, notwithstanding any other provision
11 of this code to the contrary, ~~such the~~ the person ~~shall not be eligible~~
12 is ineligible for parole until he or she has served fifteen years:
13 *Provided, however,* That if the accused pleads guilty of murder of
14 the first degree, the court shall, for convicted persons aged under
15 eighteen at the time the murder was committed and may, in its
16 discretion, for convicted persons aged eighteen or older at the
17 time the murder was committed, provide that ~~such the~~ the person ~~shall~~
18 ~~be~~ is eligible for parole in accordance with the provisions of ~~said~~
19 article twelve of this chapter, and, if the court so provides, ~~such~~
20 the person ~~shall be~~ is eligible for parole in accordance with the
21 provisions of ~~said~~ article twelve of this chapter in the same
22 manner ~~and with like effect~~ as if ~~such the~~ the person had been found
23 guilty by the verdict of a jury and the jury had recommended mercy,
24 except that, notwithstanding any provision of ~~said~~ article twelve

1 of this chapter or any other provision of this code to the
2 contrary, ~~such~~ the person ~~shall~~ may not be eligible for parole
3 until he or she has served fifteen years.

4 **§62-3-22. Abolishing life sentences without parole for juveniles.**

5 The West Virginia Legislature hereby finds that:

6 (1) Nationally, eighty percent of juveniles serving life
7 sentences reported witnessing violence in their homes; more than
8 fifty percent witnessed weekly violence in their neighborhoods.

9 (2) Nearly fifty percent of all children sentenced to life
10 imprisonment without parole have been physically abused; twenty
11 percent of juveniles serving life sentences have been sexually
12 abused.

13 (3) As stated by the United States Supreme Court in *Miller v.*
14 *Alabama*, 132 S. Ct. 2455 (2012), "only a relatively small
15 proportion of adolescents who engage in illegal activity develop
16 entrenched patterns of problem behavior," and that "developments in
17 psychology and brain science continue to show fundamental
18 differences between juvenile and adult minds," including "parts of
19 the brain involved in behavior control." *Id.* at 2464-65 (internal
20 quotations and brackets omitted).

21 (4) Children "are more vulnerable to negative influences and
22 outside pressures, including from their family and peers," and
23 "they have limited control over their own environment and lack the
24 ability to extricate themselves from horrific, crime-producing

1 settings." *Id.* at 2464 (internal quotations and brackets omitted).

2 (5) As stated and emphasized by the U.S. Supreme Court, "the
3 distinctive attributes of youth diminish the penological
4 justifications for imposing the harshest sentences on juvenile
5 offenders, even when they commit terrible crimes." *Id.* at 2465.

6 (6) Youthfulness both lessens a juvenile's moral culpability
7 and enhances the prospect that, as a youth matures into an adult
8 and neurological development occurs, these individuals can become
9 contributing members of society.

10 (7) The United States is the only country in the world that
11 allows children to be sentenced to life imprisonment without parole
12 and is one of only two countries that has not ratified the U.N.
13 Convention on the Rights of the Child which protects juvenile
14 offenders from "torture or other cruel, inhuman or degrading
15 treatment."

16 (8) Article 37 of the U.N. Convention on the Rights of the
17 Child categorically bars the imposition of "capital punishment [or]
18 life without the possibility of release . . . for [offenses]
19 committed by persons below eighteen years of age."

20 (9) Children are constitutionally different from adults and
21 criminal sentences must take their status as children, and the
22 accompanying emotional, psychological, and developmental
23 differences into account.

24 (10) Life imprisonment without parole for juvenile offenders

1 under eighteen years of age is a violation of human rights,
2 international norms, and the constitutional prohibition on cruel
3 and unusual punishment.

4 (11) The purposes of this section, section thirteen-b, article
5 twelve of this chapter and the amendments made to section fifteen
6 of this article by this act are to abolish life imprisonment
7 without parole for juveniles under the age of eighteen and
8 establish parole review mechanisms for juveniles sentenced in adult
9 court in line with the meaning and spirit of *Roper v. Simmons*, 543
10 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *J.D.B v.*
11 *North Carolina*, 131 S. Ct. 2394 (2011),; and *Miller v. Alabama*, 132
12 S. Ct. 2455 (2012).

13 **ARTICLE 12. PROBATION AND PAROLE.**

14 **§62-12-13b. Special parole considerations for persons convicted**
15 **for actions taken when they were juveniles.**

16 (a) Unless subject to earlier parole eligibility pursuant to
17 the provisions of section thirteen, article twelve, chapter
18 sixty-two or other statutory provisions, a prisoner who was a
19 juvenile under the age of eighteen at the time of the offense or
20 multiple offenses and was tried and sentenced as an adult, is
21 eligible for parole no later than his or her fifteenth year of
22 incarceration. The parole board shall ensure that the hearing to
23 consider parole under this subsection provides a meaningful

1 opportunity to obtain release and shall create guidelines
2 consistent with this code and existing case law regarding the
3 imprisonment of juveniles treated as adults in the criminal justice
4 system.

5 (b) During a parole hearing involving a prisoner who was
6 convicted and sentenced as a juvenile, the parole board shall take
7 into consideration the diminished culpability of juveniles as
8 compared to that of adults, the hallmark features of youth, and any
9 subsequent growth and increased maturity of the prisoner during
10 incarceration. The board shall also consider the following:

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

12 (2) Participation in available rehabilitative and educational
13 programs while in prison;

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

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

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

17 (6) Efforts made toward rehabilitation;

18 (7) Evidence of remorse; and

19 (8) Any other factors or circumstances the board deems
20 relevant.

NOTE: The purpose of this bill is to abolish life imprisonment without parole for juveniles under the age of eighteen and establish parole review mechanisms for juveniles sentenced in adult court in line with the meaning and spirit of recent Supreme Court cases.

Strike-throughs indicate language that would be stricken from

the present law, and underscoring indicates new language that would be added.

§62-3-22 and §62-12-13b are new; therefore, strike-throughs and underscoring have been omitted.