

Representative V. Lowry Snow proposes the following substitute bill:

JUVENILE SENTENCING AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: _____

LONG TITLE

General Description:

This bill prohibits sentencing an individual under 18 years of age to life in prison without parole.

Highlighted Provisions:

This bill:

- prohibits sentencing an individual under 18 years of age convicted of a capital crime to life in prison without parole;

- allows sentencing convicted capital offenders under 18 years of age only to an indeterminate prison term of not less than 25 years and that may be for life;

- provides that the court, rather than a jury, determine the length of prison sentence for an individual younger than 18 years of age;

- prohibits sentencing an individual under 18 years of age to life in prison without parole if the individual commits certain additional crimes while serving a sentence;

and

- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **76-3-203.6**, as last amended by Laws of Utah 2007, Chapter 339

30 **76-3-206**, as last amended by Laws of Utah 2009, Chapter 76

31 **76-3-207**, as last amended by Laws of Utah 2010, Chapter 373

32 **76-3-207.5**, as last amended by Laws of Utah 2001, Chapter 209

33 **76-3-207.7**, as last amended by Laws of Utah 2009, Chapter 76

34 **77-27-7**, as last amended by Laws of Utah 2008, Chapter 382

35 ENACTS:

36 **76-3-209**, Utah Code Annotated 1953



38 *Be it enacted by the Legislature of the state of Utah:*

39 Section 1. Section **76-3-203.6** is amended to read:

40 **76-3-203.6. Enhanced penalty for certain offenses committed by prisoner.**

41 (1) As used in this section, "serving a sentence" means a prisoner is sentenced and
42 committed to the custody of the Department of Corrections, the sentence has not been
43 terminated or voided, and the prisoner:

- 44 (a) has not been paroled; or
- 45 (b) is in custody after arrest for a parole violation.

46 (2) If the trier of fact finds beyond a reasonable doubt that a prisoner serving a sentence
47 for a capital felony or a first degree felony commits any offense listed in Subsection ~~[(3)]~~ (5),
48 the court shall sentence the ~~[defendant]~~ prisoner to life in prison without parole. ~~[However,]~~

49 (3) Notwithstanding Subsection (2), the court may sentence the ~~[defendant]~~ prisoner to
50 an indeterminate prison term of not less than 20 years and ~~[which]~~ that may be for life if the
51 court finds that the interests of justice would best be served and states the specific
52 circumstances justifying the disposition on the record.

53 (4) Subsection (2) does not apply if the prisoner is younger than 18 years of age at the
54 time the offense listed in Subsection (5) is committed.

55 ~~[(3)]~~ (5) Offenses referred to in Subsection (2) are:

- 56 (a) aggravated assault, ~~[Subsection]~~ Section **76-5-103**~~[(2)]~~;

- 57 (b) mayhem, Section 76-5-105;
- 58 (c) attempted murder, Section 76-5-203;
- 59 (d) kidnapping, Section 76-5-301;
- 60 (e) child kidnapping, Section 76-5-301.1;
- 61 (f) aggravated kidnapping, Section 76-5-302;
- 62 (g) rape, Section 76-5-402;
- 63 (h) rape of a child, Section 76-5-402.1;
- 64 (i) object rape, Section 76-5-402.2;
- 65 (j) object rape of a child, Section 76-5-402.3;
- 66 (k) forcible sodomy, Section 76-5-403;
- 67 (l) sodomy on a child, Section 76-5-403.1;
- 68 (m) aggravated sexual abuse of a child, Section 76-5-404.1;
- 69 (n) aggravated sexual assault, Section 76-5-405;
- 70 (o) aggravated arson, Section 76-6-103;
- 71 (p) aggravated burglary, Section 76-6-203; and
- 72 (q) aggravated robbery, Section 76-6-302.

73 ~~[(4)]~~ (6) The sentencing enhancement described in this section does not apply if:

74 (a) the offense for which the person is being sentenced is:

- 75 (i) a grievous sexual offense;
- 76 (ii) child kidnapping, Section 76-5-301.1; or
- 77 (iii) aggravated kidnapping, Section 76-5-302; and

78 (b) applying the sentencing enhancement provided for in this section would result in a
79 lower maximum penalty than the penalty provided for under the section that describes the
80 offense for which the person is being sentenced.

81 Section 2. Section 76-3-206 is amended to read:

82 **76-3-206. Capital felony -- Penalties.**

83 (1) A person who has pled guilty to or been convicted of a capital felony shall be
84 sentenced in accordance with this section and Section 76-3-207. ~~[That sentence shall be death,~~
85 ~~an indeterminate prison term of not less than 25 years and which may be for life, or, on or after~~
86 ~~April 27, 1992, life in prison without parole.]~~

87 (2) (a) If the person described in Subsection (1) was 18 years of age or older at the time

88 the offense was committed, the sentence shall be:

89 (i) death;

90 (ii) an indeterminate prison term of not less than 25 years and that may be for life; or

91 (iii) on or after April 27, 1992, life in prison without parole.

92 (b) Subsections (2)(a)(i) and (2)(a)(iii) do not apply if the person was younger than 18
93 years of age at the time the offense was committed.

94 [~~2~~] (3) (a) The judgment of conviction and sentence of death is subject to automatic
95 review by the Utah State Supreme Court within 60 days after certification by the sentencing
96 court of the entire record unless time is extended an additional period not to exceed 30 days by
97 the Utah State Supreme Court for good cause shown.

98 (b) The review by the Utah State Supreme Court has priority over all other cases and
99 shall be heard in accordance with rules promulgated by the Utah State Supreme Court.

100 Section 3. Section **76-3-207** is amended to read:

101 **76-3-207. Capital felony -- Sentencing proceeding.**

102 (1) (a) When a defendant has pled guilty to or been found guilty of a capital felony,
103 there shall be further proceedings before the court or jury on the issue of sentence.

104 (b) In the case of a plea of guilty to a capital felony, the sentencing proceedings shall
105 be conducted before a jury or, upon request of the defendant and with the approval of the court
106 and the consent of the prosecution, by the court which accepted the plea.

107 (c) (i) When a defendant has been found guilty of a capital felony, the proceedings
108 shall be conducted before the court or jury which found the defendant guilty, provided the
109 defendant may waive hearing before the jury with the approval of the court and the consent of
110 the prosecution, in which event the hearing shall be before the court.

111 (ii) If circumstances make it impossible or impractical to reconvene the same jury for
112 the sentencing proceedings, the court may dismiss that jury and convene a new jury for the
113 proceedings.

114 (d) If a retrial of the sentencing proceedings is necessary as a consequence of a remand
115 from an appellate court, the sentencing authority shall be determined as provided in Subsection
116 (6).

117 (2) (a) In capital sentencing proceedings, evidence may be presented on:

118 (i) the nature and circumstances of the crime;

119 (ii) the defendant's character, background, history, and mental and physical condition;

120 (iii) the victim and the impact of the crime on the victim's family and community

121 without comparison to other persons or victims; and

122 (iv) any other facts in aggravation or mitigation of the penalty that the court considers

123 relevant to the sentence.

124 (b) Any evidence the court considers to have probative force may be received
125 regardless of its admissibility under the exclusionary rules of evidence. The state's attorney and
126 the defendant shall be permitted to present argument for or against the sentence of death.

127 (3) Aggravating circumstances include those outlined in Section [76-5-202](#).

128 (4) Mitigating circumstances include:

129 (a) the defendant has no significant history of prior criminal activity;

130 (b) the homicide was committed while the defendant was under the influence of mental
131 or emotional disturbance;

132 (c) the defendant acted under duress or under the domination of another person;

133 (d) at the time of the homicide, the capacity of the defendant to appreciate the
134 wrongfulness of his conduct or to conform his conduct to the requirement of law was impaired
135 as a result of a mental condition, intoxication, or influence of drugs, except that "mental
136 condition" under this Subsection (4)(d) does not mean an abnormality manifested primarily by
137 repeated criminal conduct;

138 (e) the youth of the defendant at the time of the crime;

139 (f) the defendant was an accomplice in the homicide committed by another person and
140 the defendant's participation was relatively minor; and

141 (g) any other fact in mitigation of the penalty.

142 (5) (a) The court or jury, as the case may be, shall retire to consider the penalty. Except
143 as provided in ~~[Subsection]~~ Subsections [76-3-207.5\(2\)](#) and [76-3-206\(2\)\(b\)](#), in all proceedings
144 before a jury, under this section, it shall be instructed as to the punishment to be imposed upon
145 a unanimous decision for death and that the penalty of either an indeterminate prison term of
146 not less than 25 years and which may be for life or life in prison without parole, shall be
147 imposed if a unanimous decision for death is not found.

148 (b) The death penalty shall only be imposed if, after considering the totality of the
149 aggravating and mitigating circumstances, the jury is persuaded beyond a reasonable doubt that

150 total aggravation outweighs total mitigation, and is further persuaded, beyond a reasonable
151 doubt, that the imposition of the death penalty is justified and appropriate in the circumstances.
152 If the jury reports unanimous agreement to impose the sentence of death, the court shall
153 discharge the jury and shall impose the sentence of death.

154 (c) If the jury is unable to reach a unanimous decision imposing the sentence of death,
155 the jury shall then determine whether the penalty of life in prison without parole shall be
156 imposed, except as provided in Subsection [76-3-207.5\(2\)](#). The penalty of life in prison without
157 parole shall only be imposed if the jury determines that the sentence of life in prison without
158 parole is appropriate. If the jury reports agreement by 10 jurors or more to impose the sentence
159 of life in prison without parole, the court shall discharge the jury and shall impose the sentence
160 of life in prison without parole. If 10 jurors or more do not agree upon a sentence of life in
161 prison without parole, the court shall discharge the jury and impose an indeterminate prison
162 term of not less than 25 years and which may be for life.

163 (d) If the defendant waives hearing before the jury as to sentencing, with the approval
164 of the court and the consent of the prosecution, the court shall determine the appropriate
165 penalty according to the standards of Subsections (5)(b) and (c).

166 (e) If the defendant is sentenced to more than one term of life in prison with or without
167 the possibility of parole, or in addition to a sentence of life in prison with or without the
168 possibility of parole the defendant is sentenced for other offenses which result in terms of
169 imprisonment, the judge shall determine whether the terms of imprisonment shall be imposed
170 as concurrent or consecutive sentences in accordance with Section [76-3-401](#).

171 (6) Upon any appeal by the defendant where the sentence is of death, the appellate
172 court, if it finds prejudicial error in the sentencing proceeding only, may set aside the sentence
173 of death and remand the case to the trial court for new sentencing proceedings to the extent
174 necessary to correct the error or errors. An error in the sentencing proceedings may not result
175 in the reversal of the conviction of a capital felony. In cases of remand for new sentencing
176 proceedings, all exhibits and a transcript of all testimony and other evidence properly admitted
177 in the prior trial and sentencing proceedings are admissible in the new sentencing proceedings,
178 and if the sentencing proceeding was before a:

179 (a) jury, a new jury shall be impaneled for the new sentencing proceeding unless the
180 defendant waives the hearing before the jury with the approval of the court and the consent of

181 the prosecution, in which case the proceeding shall be held according to Subsection (6)(b) or
182 (c), as applicable;

183 (b) judge, the original trial judge shall conduct the new sentencing proceeding; or

184 (c) judge, and the original trial judge is unable or unavailable to conduct a new
185 sentencing proceeding, then another judge shall be designated to conduct the new sentencing
186 proceeding, and the new proceeding will be before a jury unless the defendant waives the
187 hearing before the jury with the approval of the court and the consent of the prosecution.

188 (7) If the penalty of death is held to be unconstitutional by the Utah Supreme Court or
189 the United States Supreme Court, the court having jurisdiction over a person previously
190 sentenced to death for a capital felony shall cause the person to be brought before the court, and
191 the court shall sentence the person to life in prison without parole.

192 (8) (a) If the appellate court's final decision regarding any appeal of a sentence of death
193 precludes the imposition of the death penalty due to mental retardation or subaverage general
194 intellectual functioning under Section 77-15a-101, the court having jurisdiction over a
195 defendant previously sentenced to death for a capital felony shall cause the defendant to be
196 brought before the sentencing court, and the court shall sentence the defendant to life in prison
197 without parole.

198 (b) If the appellate court precludes the imposition of the death penalty under
199 Subsection (8)(a), but the appellate court finds that sentencing the defendant to life in prison
200 without parole is likely to result in a manifest injustice, it may remand the case to the
201 sentencing court for further sentencing proceedings to determine if the defendant should serve
202 a sentence of life in prison without parole or an indeterminate prison term of not less than 25
203 years and which may be for life.

204 Section 4. Section 76-3-207.5 is amended to read:

205 **76-3-207.5. Applicability -- Effect on sentencing -- Options of offenders.**

206 (1) (a) The sentencing option of life without parole provided in Sections 76-3-201 and
207 76-3-207 applies only to those capital felonies for which the offender was 18 years of age or
208 older at the time the offense was committed and is sentenced on or after April 27, 1992.

209 (b) The sentencing option of life without parole provided in Sections 76-3-201 and
210 76-3-207 has no effect on sentences imposed in capital cases prior to April 27, 1992.

211 (2) An offender, who commits a capital felony prior to April 27, 1992, but is sentenced

212 on or after April 27, 1992, shall be given the option, prior to a sentencing hearing pursuant to
213 Section 76-3-207, to proceed either under the law which was in effect at the time the offense
214 was committed or under the additional sentencing option of life in prison without parole
215 provided in Sections 76-3-201 and 76-3-207.

216 (3) Notwithstanding any provision of this title, an offender may not be sentenced to life
217 without parole if the offender is younger than 18 years of age at the time the offense was
218 committed.

219 Section 5. Section 76-3-207.7 is amended to read:

220 **76-3-207.7. First degree felony aggravated murder -- Noncapital felony --**
221 **Penalties -- Sentenced by court.**

222 (1) A person who has pled guilty to or been convicted of first degree felony aggravated
223 murder under Section 76-5-202 shall be sentenced by the court.

224 (2) (a) The sentence under this section shall be:

225 (i) life in prison without parole; or

226 (ii) an indeterminate prison term of not less than 25 years and [~~which~~] that may be for
227 life.

228 (b) Subsection (2)(a)(i) does not apply if the person was younger than 18 years of age
229 at the time the offense was committed.

230 Section 6. Section 76-3-209 is enacted to read:

231 **76-3-209. Juvenile Sentencing.**

232 A sentence of life without parole must not be imposed or inflicted upon any person
233 convicted of crimes punishable by life without parole who, at the time of the commission of the
234 crimes, was younger than 18 years of age. The maximum punishment that may be imposed on
235 a person described in this section is life with the possibility of parole.

236 Section 7. Section 77-27-7 is amended to read:

237 **77-27-7. Parole or hearing dates -- Interview -- Hearings -- Report of alienists --**
238 **Mental competency.**

239 (1) The Board of Pardons and Parole shall determine within six months after the date
240 of an offender's commitment to the custody of the Department of Corrections, for serving a
241 sentence upon conviction of a felony or class A misdemeanor offense, a date upon which the
242 offender shall be afforded a hearing to establish a date of release or a date for a rehearing, and

243 shall promptly notify the offender of the date.

244 (a) Unless an offender is subject to earlier eligibility for parole pursuant to any other
245 provision of law or administrative rule, an offender who was sentenced as an adult for one or
246 more offenses that were committed when the offender was younger than 18 years of age is
247 eligible for release on parole and shall be provided a parole hearing.

248 (b) An offender who is serving a period of incarceration for having been convicted of
249 one or more offenses for which the sentence or any combination of sentences imposed is for a
250 period that renders the offender ineligible for parole until the offender has served more than
251 fifteen years shall be eligible for parole.

252 (c) The Board of Pardons shall provide an original parole hearing no later than 15 years
253 after sentencing for an offender described in Subsection (1)(b).

254 (d) This section shall have retroactive application and shall be applied to crimes
255 committed or sentenced before, on, or after May 10, 2016, regardless of the sentence originally
256 imposed.

257 (2) Before reaching a final decision to release any offender under this chapter, the chair
258 shall cause the offender to appear before the board, its panel, or any appointed hearing officer,
259 who shall personally interview the offender to consider the offender's fitness for release and
260 verify as far as possible information furnished from other sources. Any offender may waive a
261 personal appearance before the board. Any offender outside of the state shall, if ordered by the
262 board, submit to a courtesy hearing to be held by the appropriate authority in the jurisdiction in
263 which the offender is housed in lieu of an appearance before the board. The offender shall be
264 promptly notified in writing of the board's decision.

265 (3) (a) When an offender who is serving a sentence imposed as the result of an offense
266 or offenses committed when the offender was younger than 18 years of age becomes eligible
267 for parole, the parole board shall ensure that the procedures governing its consideration of the
268 offender's application for parole ensure that the offender is provided a meaningful opportunity
269 to obtain release and shall adopt rules and guidelines for that purpose that are consistent with
270 existing case law.

271 (b) During a parole hearing involving an offender described in Subsection (3)(a), in
272 addition to other factors required by law to be considered by the parole board, the parole board
273 shall take into consideration the diminished culpability of juveniles as compared to that of

274 adults, the hallmark features of youth, and any subsequent growth and increased maturity of the
275 offender during incarceration.

276 (c) An offender eligible for parole consideration under this section may have counsel
277 present to speak on the offender's behalf during a parole hearing.

278 (d) If parole is denied to the offender under this section, the parole board shall
279 reconsider whether or not to grant parole at subsequent hearings no later than every three years
280 from the previous denial.

281 (e) This section shall have retroactive application and shall be applied to offenders
282 whose crimes were committed or sentenced before, on, or after May 10, 2016, regardless of the
283 sentence originally imposed.

284 ~~[(3)]~~ (4) (a) In the case of an offender convicted of violating or attempting to violate
285 any of the provisions of Section 76-5-301.1, Subsection 76-5-302(1)(b)(vi), Section 76-5-402,
286 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404, 76-5-404.1, or 76-5-405,
287 the chair may appoint one or more alienists who shall examine the offender within six months
288 prior to a hearing at which an original parole date is granted on any offense listed in this
289 Subsection ~~[(3)]~~ (4).

290 (b) The alienists shall report in writing the results of the examination to the board prior
291 to the hearing. The report of the appointed alienists shall specifically address the question of
292 the offender's current mental condition and attitudes as they relate to any danger the offender
293 may pose to children or others if the offender is released on parole.

294 ~~[(4)]~~ (5) The parolee may petition the board for termination of lifetime parole as
295 provided in Section 76-3-202 in the case of a person convicted of a first degree felony violation
296 or convicted of attempting to violate Section 76-5-301.1, Subsection 76-5-302(1)(b)(vi),
297 Section 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404.1, or
298 76-5-405.

299 ~~[(5)]~~ (6) In any case where an offender's mental competency is questioned by the board,
300 the chair may appoint one or more alienists to examine the offender and report in writing to the
301 board, specifically addressing the issue of competency.

302 ~~[(6)]~~ (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
303 Act, the board shall make rules governing:

304 (a) the hearing process;

- 305 (b) alienist examination; and
- 306 (c) parolee petitions for termination of parole.