# HB0405S01 compared with HB0405

~~{deleted text}~~ shows text that was in HB0405 but was deleted in HB0405S01.

inserted text shows text that was not in HB0405 but was inserted into HB0405S01.

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**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:**

None

**Utah Code Sections Affected:**

AMENDS:

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

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

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

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

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

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

ENACTS:

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

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

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

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

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

(a) has not been paroled; or

(b) is in custody after arrest for a parole violation.

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

(3) Notwithstanding Subsection (2), the court may sentence the [~~defendant~~] prisoner to an indeterminate prison term of not less than 20 years and [~~which~~] that may be for life if the

court finds that the interests of justice would best be served and states the specific circumstances justifying the disposition on the record.

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

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

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

(b) mayhem, Section 76-5-105;

(c) attempted murder, Section 76-5-203;

(d) kidnapping, Section 76-5-301;

(e) child kidnapping, Section 76-5-301.1;

(f) aggravated kidnapping, Section 76-5-302;

(g) rape, Section 76-5-402;

(h) rape of a child, Section 76-5-402.1;

(i) object rape, Section 76-5-402.2;

(j) object rape of a child, Section 76-5-402.3;

(k) forcible sodomy, Section 76-5-403;

(l) sodomy on a child, Section 76-5-403.1;

(m) aggravated sexual abuse of a child, Section 76-5-404.1;

(n) aggravated sexual assault, Section 76-5-405;

(o) aggravated arson, Section 76-6-103;

(p) aggravated burglary, Section 76-6-203; and

(q) aggravated robbery, Section 76-6-302.

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

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

(i) a grievous sexual offense;

(ii) child kidnapping, Section 76-5-301.1; or

(iii) aggravated kidnapping, Section 76-5-302; and

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

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

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

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

(2) (a) If the person described in Subsection (1) was 18 years of age or older at the time the offense was committed, the sentence shall be:

(i) death;

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

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

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

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

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

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

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

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

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

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

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

proceedings.

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

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

(i) the nature and circumstances of the crime;

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

(iii) the victim and the impact of the crime on the victim's family and community without comparison to other persons or victims; and

(iv) any other facts in aggravation or mitigation of the penalty that the court considers relevant to the sentence.

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

(3) Aggravating circumstances include those outlined in Section 76-5-202.

(4) Mitigating circumstances include:

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

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

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

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

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

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

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

(5) (a) The court or jury, as the case may be, shall retire to consider the penalty. Except as provided in [~~Subsection~~] Subsections 76-3-207.5(2) and 76-3-206(2)(b), in all proceedings

before a jury, under this section, it shall be instructed as to the punishment to be imposed upon a unanimous decision for death and that the penalty of either an indeterminate prison term of not less than 25 years and which may be for life or life in prison without parole, shall be imposed if a unanimous decision for death is not found.

(b) The death penalty shall only be imposed if, after considering the totality of the aggravating and mitigating circumstances, the jury is persuaded beyond a reasonable doubt that total aggravation outweighs total mitigation, and is further persuaded, beyond a reasonable doubt, that the imposition of the death penalty is justified and appropriate in the circumstances. If the jury reports unanimous agreement to impose the sentence of death, the court shall discharge the jury and shall impose the sentence of death.

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

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

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

(6) Upon any appeal by the defendant where the sentence is of death, the appellate court, if it finds prejudicial error in the sentencing proceeding only, may set aside the sentence of death and remand the case to the trial court for new sentencing proceedings to the extent necessary to correct the error or errors. An error in the sentencing proceedings may not result

in the reversal of the conviction of a capital felony. In cases of remand for new sentencing proceedings, all exhibits and a transcript of all testimony and other evidence properly admitted in the prior trial and sentencing proceedings are admissible in the new sentencing proceedings, and if the sentencing proceeding was before a:

(a) jury, a new jury shall be impaneled for the new sentencing proceeding unless the defendant waives the hearing before the jury with the approval of the court and the consent of the prosecution, in which case the proceeding shall be held according to Subsection (6)(b) or (c), as applicable;

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

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

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

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

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

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

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

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

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

(2) An offender, who commits a capital felony prior to April 27, 1992, but is sentenced on or after April 27, 1992, shall be given the option, prior to a sentencing hearing pursuant to Section 76-3-207, to proceed either under the law which was in effect at the time the offense was committed or under the additional sentencing option of life in prison without parole provided in Sections 76-3-201 and 76-3-207.

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

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

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

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

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

(i) life in prison without parole; or

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

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

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~~**Legislative Review Note**~~

~~**Office of Legislative Research and General Counsel)**~~ Section 6. Section **76-3-209** is enacted to read:

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

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

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

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

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

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

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

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

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

(2) Before reaching a final decision to release any offender under this chapter, the chair shall cause the offender to appear before the board, its panel, or any appointed hearing officer, who shall personally interview the offender to consider the offender's fitness for release and verify as far as possible information furnished from other sources. Any offender may waive a personal appearance before the board. Any offender outside of the state shall, if ordered by the

board, submit to a courtesy hearing to be held by the appropriate authority in the jurisdiction in which the offender is housed in lieu of an appearance before the board. The offender shall be promptly notified in writing of the board's decision.

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

(b) During a parole hearing involving an offender described in Subsection (3)(a), in addition to other factors required by law to be considered by the parole board, the parole board shall take into consideration the diminished culpability of juveniles as compared to that of adults, the hallmark features of youth, and any subsequent growth and increased maturity of the offender during incarceration.

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

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

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

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

(b) The alienists shall report in writing the results of the examination to the board prior to the hearing. The report of the appointed alienists shall specifically address the question of the offender's current mental condition and attitudes as they relate to any danger the offender

may pose to children or others if the offender is released on parole.

[~~(4)~~] (5) The parolee may petition the board for termination of lifetime parole as provided in Section 76-3-202 in the case of a person convicted of a first degree felony violation or convicted of attempting to violate Section 76-5-301.1, Subsection 76-5-302(1)(b)(vi), 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 76-5-405.

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

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

(a) the hearing process;

(b) alienist examination; and

(c) parolee petitions for termination of parole.