

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: Daniel W. Thatcher

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 ENACTS:

35 **76-3-209**, Utah Code Annotated 1953



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

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

39 **76-3-203.6. Enhanced penalty for certain offenses committed by prisoner.**

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

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

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

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

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

54 [~~(3)~~] (5) Offenses referred to in Subsection (2) are:

- 55 (a) aggravated assault, [~~Subsection~~] Section 76-5-103[~~(2)~~];
- 56 (b) mayhem, Section **76-5-105**;

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

72 [(4)] (6) The sentencing enhancement described in this section does not apply if:

- 73 (a) the offense for which the person is being sentenced is:
 - 74 (i) a grievous sexual offense;
 - 75 (ii) child kidnapping, Section 76-5-301.1; or
 - 76 (iii) aggravated kidnapping, Section 76-5-302; and
- 77 (b) applying the sentencing enhancement provided for in this section would result in a
- 78 lower maximum penalty than the penalty provided for under the section that describes the
- 79 offense for which the person is being sentenced.

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

81 **76-3-206. Capital felony -- Penalties.**

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

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

- 88 (i) death;
- 89 (ii) an indeterminate prison term of not less than 25 years and that may be for life; or
- 90 (iii) on or after April 27, 1992, life in prison without parole.
- 91 (b) Subsections (2)(a)(i) and (2)(a)(iii) do not apply if the person was younger than 18
- 92 years of age at the time the offense was committed.

93 [~~2~~] (3) (a) The judgment of conviction and sentence of death is subject to automatic
94 review by the Utah State Supreme Court within 60 days after certification by the sentencing
95 court of the entire record unless time is extended an additional period not to exceed 30 days by
96 the Utah State Supreme Court for good cause shown.

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

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

100 **76-3-207. Capital felony -- Sentencing proceeding.**

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

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

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

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

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

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

- 117 (i) the nature and circumstances of the crime;
- 118 (ii) the defendant's character, background, history, and mental and physical condition;

119 (iii) the victim and the impact of the crime on the victim's family and community
120 without comparison to other persons or victims; and
121 (iv) any other facts in aggravation or mitigation of the penalty that the court considers
122 relevant to the sentence.

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

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

127 (4) Mitigating circumstances include:

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

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

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

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

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

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

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

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

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

150 doubt, that the imposition of the death penalty is justified and appropriate in the circumstances.
151 If the jury reports unanimous agreement to impose the sentence of death, the court shall
152 discharge the jury and shall impose the sentence of death.

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

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

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

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

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

181 (c), as applicable;

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

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

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

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

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

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

204 **76-3-207.5. Applicability -- Effect on sentencing -- Options of offenders.**

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

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

210 (2) An offender, who commits a capital felony prior to April 27, 1992, but is sentenced
211 on or after April 27, 1992, shall be given the option, prior to a sentencing hearing pursuant to

212 Section 76-3-207, to proceed either under the law which was in effect at the time the offense
213 was committed or under the additional sentencing option of life in prison without parole
214 provided in Sections 76-3-201 and 76-3-207.

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

216 **76-3-207.7. First degree felony aggravated murder -- Noncapital felony --**
217 **Penalties -- Sentenced by court.**

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

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

221 (i) life in prison without parole; or

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

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

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

227 **76-3-209. Limitation on sentencing for juveniles.**

228 Notwithstanding any provision of law, a person may not be sentenced to life without
229 parole if convicted of a crime punishable by life without parole if, at the time of the
230 commission of the crime, the person was younger than 18 years of age. The maximum
231 punishment that may be imposed on a person described in this section is life with the
232 possibility of parole. This section shall apply prospectively to individuals sentenced on or after
233 May 10, 2016.