

HB0405S02 compared with HB0405

~~deleted text~~ shows text that was in HB0405 but was deleted in HB0405S02.

inserted text shows text that was not in HB0405 but was inserted into HB0405S02.

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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

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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

ENACTS:

76-3-209, Utah Code Annotated 1953

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 to life in prison without parole. [~~However,~~]

(3) Notwithstanding Subsection (2), the court may sentence the defendant 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

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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.

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(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.

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(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

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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

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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

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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.

‡

Legislative Review Note

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

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

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Notwithstanding any provision of law, a person may not be sentenced to life without parole if convicted of a crime punishable by life without parole if, at the time of the commission of the crime, the person 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. This section shall apply prospectively to individuals sentenced on or after May 10, 2016.