

Regular Session, 2013

HOUSE BILL NO. 319

BY REPRESENTATIVE HONORE

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

JUVENILES: Provides relative to the sentencing and parole eligibility of juvenile offenders convicted of first or second degree murder

1 AN ACT

2 To amend and reenact R.S. 15:574.4(B)(1) and to enact Chapter 4 of Title XXX of the Code
3 of Criminal Procedure to be comprised of Articles 906 through 906.5, and R.S.
4 15:574.4(E), relative to sentencing of certain juvenile offenders; to provide
5 procedures for sentencing juvenile offenders convicted of first or second degree
6 murder; to provide for aggravating and mitigating circumstances; to provide parole
7 eligibility for juvenile offenders sentenced to life imprisonment for first or second
8 degree murder; to provide for conditions; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Chapter 4 of Title XXX of the Code of Criminal Procedure, comprised
11 of Articles 906 through 906.5, is hereby enacted to read as follows:

12 CHAPTER 4. SENTENCING OF JUVENILES CONVICTED OF MURDER

13 Art. 906. Sentencing of juveniles convicted of first degree murder

14 A. Notwithstanding the provisions of R.S. 14:30(C), following a verdict or
15 plea of guilty of first degree murder, where the defendant was under the age of
16 eighteen years at the time of the commission of the offense, a sentence of life
17 imprisonment without benefit of parole may only be imposed after a sentencing
18 hearing as provided in this Chapter.

1 B. The sentencing hearing shall commence no sooner than twelve hours after
2 a conviction by trial or plea of guilty, except upon joint motion of the state and the
3 offender.

4 C. Notwithstanding the provisions of R.S. 14:30(C), a sentence for first
5 degree murder for a defendant who was under the age of eighteen years at the time
6 of the commission of the offense shall only be imposed pursuant to the provisions
7 of Article 906.2 of this Code.

8 Art. 906.1. Sentencing determination for juveniles convicted of first degree murder

9 A. Notwithstanding the provisions of R.S. 14:30(C), a sentence of life
10 imprisonment without benefit of parole for first degree murder committed by a
11 defendant who was under the age of eighteen at the time of the commission of the
12 offense shall only be imposed upon a unanimous determination of the jury pursuant
13 to the provisions of this Article.

14 B. Notwithstanding the provisions of R.S. 14:30(C), the sentence for first
15 degree murder for a defendant who was under the age of eighteen years at the time
16 of the commission of the offense shall only be imposed as follows:

17 (1) If the jury unanimously finds, beyond a reasonable doubt, the existence
18 of at least one aggravating circumstance as provided in Article 906.4 of this Code,
19 but does not unanimously determine, after consideration of mitigating circumstances
20 as provided in Article 906.5 of this Code, that a sentence of life imprisonment
21 without the benefit of parole shall be imposed, the court shall sentence the defendant
22 to life imprisonment with the benefit of parole pursuant to the provisions of R.S.
23 15:574.4(E).

24 (2) If the jury fails to find, beyond a reasonable doubt, the existence of at
25 least one aggravating circumstance as provided in Article 906.4 of this Code, the
26 court shall sentence the defendant to imprisonment at hard labor for not more than
27 forty years.

28 (3) If the jury unanimously finds, beyond a reasonable doubt, the existence
29 of at least one aggravating circumstance as provided in Article 906.4 of this Code,

1 and unanimously determines, after a consideration of mitigating circumstances as
2 provided in Article 906.5 of this Code, that a sentence of life imprisonment without
3 the possibility of parole should be imposed upon the defendant, the defendant shall
4 be sentenced pursuant to the provisions of R.S. 14:30(C).

5 Art. 906.2. Sentencing of juveniles convicted of second degree murder

6 A. Notwithstanding the provision of R.S. 14:30.1(B), following a verdict or
7 plea of guilty of second degree murder, where the defendant was under the age of
8 eighteen years at the time of the commission of the offense, the defendant shall only
9 be sentenced after a sentencing hearing as provided in this Chapter.

10 B. The sentencing hearing shall commence no sooner than twelve hours after
11 a conviction by trial or plea of guilty, except upon joint motion of the state and the
12 offender.

13 C. Notwithstanding the provisions of R.S. 14:30.1(B), a sentence for second
14 degree murder for a defendant who was under the age of eighteen years at the time
15 of the commission of the offense shall only be imposed pursuant to the provisions
16 of Article 906.3 of this Code.

17 Art. 906.3. Sentencing determination for juveniles convicted of second degree
18 murder

19 A. Notwithstanding the provisions of R.S. 14:30.1(B), a sentence of life
20 imprisonment for second degree murder committed by a defendant who was under
21 the age of eighteen at the time of the commission of the offense shall only be
22 imposed upon a unanimous determination of the jury pursuant to the provisions of
23 this Article, and the defendant shall never be sentenced to life imprisonment without
24 the benefit of parole.

25 B. Notwithstanding the provisions of R.S. 14:30.1(B), the sentence for
26 second degree murder for a defendant who was under the age of eighteen years at the
27 time of the commission of the offense shall only be imposed as follows:

28 (1) If the jury unanimously finds, beyond a reasonable doubt, the existence
29 of at least one aggravating circumstance as provided in Article 906.4 of this Code,

1 and unanimously determines, after consideration of mitigating circumstances as
2 provided in Article 906.5 of this Code, that a sentence of life imprisonment should
3 be imposed, the court shall sentence the defendant to life imprisonment with the
4 benefit of parole pursuant to the provisions of R.S. 15:574.4(E).

5 (2) If the jury unanimously finds, beyond a reasonable doubt, the existence
6 of at least one aggravating circumstance as provided in Article 906.4 of this Code,
7 but does not unanimously determine, after consideration of mitigating circumstances
8 as provided in Article 906.5 of this Code, that a sentence of life imprisonment should
9 be imposed, the court shall sentence the defendant to imprisonment at hard labor for
10 not more than forty years.

11 (3) If the jury fails to find, beyond a reasonable doubt, the existence of at
12 least one aggravating circumstance as provided in Article 906.4 of this Code, the
13 court shall sentence the defendant to imprisonment at hard labor for not more than
14 forty years.

15 Art. 906.4. Aggravating circumstances

16 For purposes of this Chapter, the following shall be considered aggravating
17 circumstances:

18 (1) The defendant was engaged in the perpetration or attempted perpetration
19 of aggravated rape, aggravated kidnapping, or armed robbery.

20 (2) The victim was a fireman or peace officer engaged in the performance
21 of his lawful duties.

22 (3) The defendant knowingly created a risk of death or great bodily harm to
23 more than one person.

24 (4) The defendant has previously been convicted of an unrelated murder,
25 aggravated rape, aggravated kidnapping, or armed robbery.

26 Art. 906.5. Mitigating circumstances

27 For purposes of this Chapter, the following shall be considered mitigating
28 circumstances:

29 (1) The age of the defendant at the time of the offense.

- 1 (2) The defendant's physical and emotional immaturity.
- 2 (3) The defendant's diminished intellectual capacity.
- 3 (4) The defendant's diminished mental development.
- 4 (5) The defendant's diminished emotional development.
- 5 (6) The defendant's mental retardation as defined in Article 905.5.1(H) of
6 this Code.
- 7 (7) The defendant did not directly cause or specifically intend to cause the
8 death of the victim.
- 9 (8) The defendant's family background.
- 10 (9) The defendant's inability to appreciate risks and consequences.
- 11 (10) The defendant was under the influence of another person.
- 12 (11) The defendant was under the influence of alcohol or drugs.
- 13 (12) The defendant would benefit from rehabilitation.
- 14 (13) The defendant's demonstrated maturity since the commission of the
15 offense.
- 16 (14) The defendant's demonstrated rehabilitation since the commission of the
17 offense.
- 18 (15) Any other relevant mitigating circumstance.

Section 2. R.S. 15:574.4(E) is hereby enacted to read as follows:

§574.4. Parole; eligibility

* * *

B.(1) No person shall be eligible for parole consideration who has been convicted of armed robbery and denied parole eligibility under the provisions of R.S. 14:64. Except as provided in Paragraph (2) of this Subsection, and except as provided in ~~Subsection~~ Subsections D and E of this Section, no prisoner serving a life sentence shall be eligible for parole consideration until his life sentence has been commuted to a fixed term of years. No prisoner sentenced as a serial sexual offender shall be eligible for parole. No prisoner may be paroled while there is pending against him any indictment or information for any crime suspected of having been

1 committed by him while a prisoner. Notwithstanding any other provisions of law to
2 the contrary, a person convicted of a crime of violence and not otherwise ineligible
3 for parole shall serve at least eighty-five percent of the sentence imposed, before
4 being eligible for parole. The victim or victim's family shall be notified whenever
5 the offender is to be released provided that the victim or victim's family has
6 completed a Louisiana victim notice and registration form as provided in R.S.
7 46:1841 et seq., or has otherwise provided contact information and has indicated to
8 the Department of Public Safety and Corrections, Crime Victims Services Bureau,
9 that they desire such notification.

10 * * *

11 E.(1) Notwithstanding any provision of law to the contrary, any offender
12 -serving a sentence of life imprisonment for a conviction of first degree murder (R.S.
13 14:30) or second degree murder (R.S. 14:30.1), who was under the age of eighteen
14 years at the time of the commission of the offense, shall be eligible for parole
15 consideration pursuant to the provisions of this Subsection upon serving thirty years
16 of the sentence imposed and when all of the following conditions have been met:

17 (a) The offender has not committed any disciplinary offenses in the twelve
18 consecutive months prior to the parole eligibility date.

19 (b) The offender has completed the mandatory minimum of one hundred
20 hours of prerelease programming in accordance with R.S. 15:827.1.

21 (c) The offender has completed substance abuse treatment as applicable.

22 (d) The offender has obtained a GED certification, unless the offender has
23 previously obtained a high school diploma or is deemed by a certified educator as
24 being incapable of obtaining a GED certification due to a learning disability. If the
25 offender is deemed incapable of obtaining a GED certification, the offender shall
26 complete at least one of the following:

27 (i) A literacy program.

28 (ii) An adult basic education program.

29 (iii) A job skills training program.

1 (e) The offender has obtained a low-risk level designation determined by a
2 validated risk assessment instrument approved by the secretary of the Department
3 of Public Safety and Corrections.

4 (f) The offender has completed a reentry program to be determined by the
5 Department of Public Safety and Corrections.

6 (g) If the offender was convicted of aggravated rape, he shall be designated
7 a sex offender and upon release shall comply with all sex offender registration and
8 notification provisions as required by law.

9 (2) For each offender eligible for parole consideration pursuant to the
10 provisions of this Subsection, the board shall meet in a three-member panel and each
11 member of the panel shall be provided with and shall consider a written evaluation
12 of the offender by a person who has expertise in adolescent brain development and
13 behavior and any other relevant evidence pertaining to the offender.

14 (3) The panel shall render specific findings of fact in support of its decision.

15 (4) The provisions of this Subsection shall not apply to an offender convicted
16 of first degree murder (R.S. 14:30) who was under the age of eighteen years at the
17 time of the commission of the offense and who, after a sentencing hearing pursuant
18 to the provisions of Chapter 4 of Title XXX of the Code of Criminal Procedure, was
19 sentenced to life imprisonment without the possibility of parole.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Honore

HB No. 319

Abstract: Provides relative to the sentencing and parole eligibility of juvenile offenders convicted or who plead guilty to first or second degree murder.

Present law provides that any offender who commits first degree murder or second degree murder who is under the age of 18 at the time of the commission of the offense shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.

In the case of *Miller v. Alabama*, 132 S.Ct. 2455 (2012), the U.S. Supreme Court held that mandatory life imprisonment without parole for any offender under the age of 18 violates the 8th Amendment's prohibition on cruel and unusual punishment. Although the court did

not prohibit a life sentence for juveniles convicted of homicide offenses, the court did require the sentencing court to consider the offender's youth and attendant characteristics as mitigating circumstances.

Proposed law amends present law to provide for the following:

- (1) A sentence for first degree murder for any offender who was under the age of 18 at the time of the commission of the offense shall only be imposed after a sentencing hearing as follows:
 - (a) If the jury unanimously finds, beyond a reasonable doubt, the existence of at least one aggravating circumstance, but does not unanimously determine, after consideration of mitigating circumstances, that a sentence of life imprisonment without the benefit of parole shall be imposed, the court shall sentence the offender to life imprisonment with the benefit of parole pursuant to the provisions of proposed law.
 - (b) If the jury fails to find, beyond a reasonable doubt, the existence of at least one aggravating circumstance, the court shall sentence the offender to imprisonment at hard labor for not more than 40 years.
 - (c) If the jury unanimously finds, beyond a reasonable doubt, the existence of at least one aggravating circumstance and unanimously determines, after a consideration of mitigating circumstances, that a sentence of life imprisonment without the possibility of parole should be imposed upon the offender, the offender shall be sentenced to life imprisonment without the possibility of parole pursuant to the provisions of present law.
- (2) A sentence for second degree murder for any offender who was under the age of 18 at the time of the commission of the offense shall only be imposed after a sentencing hearing as follows:
 - (a) If the jury unanimously finds, beyond a reasonable doubt, the existence of at least one aggravating circumstance and unanimously determines, after consideration of mitigating circumstances, that a sentence of life imprisonment should be imposed, the court shall sentence the offender to life imprisonment with the benefit of parole pursuant to the provisions of proposed law.
 - (b) If the jury unanimously finds, beyond a reasonable doubt, the existence of at least one aggravating circumstance, but does not unanimously determine, after consideration of mitigating circumstances, that a sentence of life imprisonment should be imposed, the court shall sentence the offender to imprisonment at hard labor for not more than 40 years.
 - (c) If the jury fails to find, beyond a reasonable doubt, the existence of at least one aggravating circumstance, the court shall sentence the offender to imprisonment at hard labor for not more than 40 years.
- (3) A offender convicted of, or who pleads guilty to, second degree murder, when the offender was under the age of 18 at the time of the commission of the offense, shall never be sentenced to life imprisonment without the possibility of parole.
- (4) The sentencing hearing provided in proposed law shall commence no sooner than 12 hours after a conviction or plea of guilty, except upon joint motion of the state and the offender.

- (5) A list of aggravating circumstances and mitigating circumstances which shall be considered by the jury.
- (6) Any offender serving a sentence of life imprisonment for a conviction of first degree murder or second degree murder, who was under the age of 18 at the time of the commission of the offense, shall be eligible for parole consideration upon serving 30 years of the sentence imposed and when all of the following conditions have been met:
- (a) The offender has not committed any disciplinary offenses in the 12 consecutive months prior to the parole eligibility date.
 - (b) The offender has completed the mandatory minimum of 100 hours of prerelease programming.
 - (c) The offender has completed substance abuse treatment as applicable.
 - (d) The offender has obtained a GED or, in certain circumstances, has completed a literacy program, an adult basic education program, or a job skills training program.
 - (e) The offender has obtained a low-risk level designation determined by a validated risk assessment instrument approved by the secretary of DPS&C.
 - (f) The offender has completed a reentry program to be determined by DPS&C.
 - (g) If the offender was convicted of aggravated rape, he shall be designated a sex offender and upon release shall comply with all sex offender registration and notification provisions as required by law.
- (7) For such parole decisions, the board shall meet in a three-member panel and each member of the panel shall be provided with and shall consider a written evaluation of the offender by a person who has expertise in adolescent brain development and behavior and any other relevant evidence pertaining to the offender.
- (8) Requires the panel to render specific findings of fact in support of its decision.
- (9) Provisions of proposed law relative to parole eligibility shall not apply to any offender convicted of first degree murder who was under the age of 18 at the time of the commission of the offense and who was sentenced to life imprisonment without the possibility of parole after a sentencing hearing pursuant to proposed law.

(Amends R.S. 15:574.4(B)(1); Adds C.Cr.P. Articles 906-906.5 and R.S. 15:574.4(E))