

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4210**

4 (By Delegates Fleischauer, Skinner, Poore,  
5 Longstreth, Barill, Ellem, Sponaugle, Lynch,  
6 Manypenny, Hamilton and Pethtel)

7 (Originating in the Committee on Finance)

8 [February 21, 2014]

9

10 A BILL to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new section, designated §61-11-23; and to  
12 amend said code by adding thereto a new section, designated  
13 §62-12-13b, all relating to providing to eligibility for  
14 parole for persons who are convicted of criminal offenses  
15 where the person was less than eighteen years of age at the  
16 time the offense was committed, generally; prohibiting a  
17 sentence of life imprisonment without the possibility of  
18 parole upon such persons; requiring that persons who are  
19 convicted of offenses and the person was less than eighteen  
20 years of age at the time the offenses were committed shall be  
21 eligible for parole after he or she has served fifteen years;  
22 requiring certain factors to be considered by court when  
23 sentencing such persons convicted after transfer to the  
24 criminal jurisdiction of the court; and requiring certain  
25 factors to be considered by the parole board when considering  
26 the eligibility for parole of a person sentenced after  
27 transfer to the criminal jurisdiction of a court.

1 *Be it enacted by the Legislature of West Virginia:*

2       That the Code of West Virginia, 1931, as amended, be amended  
3 by adding thereto a new section, designated §61-11-23; and that  
4 said code be amended by adding thereto a new section, designated  
5 §62-12-13b, all to read as follows:

6                   **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

7 **ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.**

8 **§61-11-23 Punishment for juvenile convicted as an adult;**  
9 **eligibility for probation; factors to be considered prior to**  
10 **sentencing.**

11 (a) Notwithstanding any other provision of law to the  
12 contrary, a sentence of life imprisonment without the possibility  
13 of parole may not be imposed on a person who:

14 (1) Is convicted of an offense punishable by life  
15 imprisonment; and

16 (2) Was less than eighteen years of age at the time the  
17 offense was committed.

18 (b) Unless otherwise provided by this code, the provisions of  
19 article twelve, chapter sixty-two of this code shall govern the  
20 eligibility for parole of a person who is convicted of an offense  
21 and sentenced to confinement in the custody of the commissioner of  
22 corrections if the person was less than eighteen years of age at  
23 the time the offense was committed, except that a person who is  
24 convicted of one or more offenses for which the sentence or any  
25 combination of sentences imposed is for a period that renders the

1 person ineligible for parole until he or she has served more than  
2 fifteen years shall be eligible for parole after he or she has  
3 served fifteen years if the person was less than eighteen years of  
4 age at the time each offense was committed.

5 (d) In addition to other factors required by law to be  
6 considered prior to the imposition of a sentence, in determining  
7 the appropriate sentence to be imposed on a person who has been  
8 transferred to the criminal jurisdiction of the court pursuant to  
9 section ten, article five, chapter forty-nine of this code and who  
10 has been subsequently tried and convicted of a felony offense as an  
11 adult, the court shall consider the following mitigating  
12 circumstances:

13 (1) Age at the time of the offense;

14 (2) Impetuosity;

15 (3) Family and community environment;

16 (4) Ability to appreciate the risks and consequences of the  
17 conduct;

18 (5) Intellectual capacity;

19 (6) The outcomes of a comprehensive mental health evaluation  
20 conducted by an mental health professional licensed to treat  
21 adolescents in the State of West Virginia: *Provided*, That no  
22 provision of this section may be construed to require that a  
23 comprehensive mental health evaluation be conducted;

24 (7) Peer or familial pressure;

25 (8) Level of participation in the offense;

26 (9) Ability to participate meaningfully in his or her defense;

- 1     (10) Capacity for rehabilitation;
- 2     (11) School records and special education evaluations;
- 3     (12) Trauma history;
- 4     (13) Faith and community involvement;
- 5     (14) Involvement in the child welfare system; and
- 6     (15) Any other mitigating factor or circumstances.

7     (e) (1) Prior to the imposition of a sentence on a person who  
8 has been transferred to the criminal jurisdiction of the court  
9 pursuant to section ten, article five, chapter forty-nine of this  
10 code and who has been subsequently tried and convicted of an felony  
11 offense as an adult, the court shall consider the outcomes of any  
12 comprehensive mental health evaluation conducted by an mental  
13 health professional licensed to treat adolescents in the State of  
14 West Virginia. The comprehensive mental health evaluation must  
15 include the following:

- 16     (A) Family interviews;
- 17     (B) Prenatal history;
- 18     (C) Developmental history;
- 19     (D) Medical history;
- 20     (E) History of treatment for substance use;
- 21     (F) Social history; and
- 22     (G) A psychological evaluation.

23     (2) The provisions of this subsection are only applicable to  
24 sentencing proceedings for convictions rendered after the effective  
25 date of this section and shall not constitute sufficient grounds  
26 for the reconsideration of sentences imposed as the result of

1 convictions rendered after the effective date of this section.

2 **CHAPTER 62. CRIMINAL PROCEDURE.**

3 **ARTICLE 12. PROBATION AND PAROLE.**

4 **§62-12-13b. Special parole considerations for persons convicted as**  
5 **juveniles.**

6 (a) When an inmate of a state correctional institution who is  
7 serving a sentence imposed as the result of an offense or offenses  
8 committed when the inmate was less than eighteen years of age  
9 becomes eligible for parole pursuant to applicable provisions of  
10 this code, including, but not limited to, section twenty-three,  
11 article eleven, chapter sixty-one thereof, the parole board shall  
12 ensure that the procedures governing its consideration of the  
13 inmate's application for parole ensure that the inmate is provided  
14 a meaningful opportunity to obtain release and shall adopt rules  
15 and guidelines to do so that are consistent with existing case law.

16 (b) During a parole hearing involving an inmate described in  
17 subsection (a) of this section, in addition to other factors  
18 required by law to be considered the parole board, the parole board  
19 shall take into consideration the diminished culpability of  
20 juveniles as compared to that of adults, the hallmark features of  
21 youth, and any subsequent growth and increased maturity of the  
22 prisoner during incarceration. The board shall also consider the  
23 following:

24 (1) A review of educational and court documents;

25 (2) Participation in available rehabilitative and educational

1 programs while in prison;

2       (3) Age at the time of the offense;

3       (4) Immaturity at the time of the offense;

4       (5) Home and community environment at the time of the offense;

5       (6) Efforts made toward rehabilitation;

6       (7) Evidence of remorse; and

7       (8) Any other factors or circumstances the board considers

8 relevant.