

1 adults.

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

3 That §61-2-2 of the Code of West Virginia, 1931, as amended,
4 be amended and reenacted; that §61-2-14a of said code be amended
5 and reenacted; that §62-3-15 of said code be amended and reenacted;
6 that said code be amended by adding thereto two new sections,
7 designated, §62-3-22 and §62-3-23; and that said code be amended by
8 adding thereto one new section, designated, §62-12-13b, all to read
9 as follows:

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

11 **ARTICLE 2. CRIMES AGAINST THE PERSON.**

12 **§61-2-2. Penalty for murder of first degree.**

13 Murder of the first degree shall be punished by confinement in
14 ~~the penitentiary~~ a correctional facility for life, except that a
15 juvenile convicted under this section shall be punished by a term
16 of imprisonment of not less than fifteen years or for life. A
17 juvenile imprisoned pursuant to the provisions of this section is
18 not eligible for parole prior to having served a minimum of fifteen
19 years of his or her sentence or the minimum period required by the
20 provisions of section thirteen, article twelve, chapter sixty-two,
21 whichever is greater.

22 **§61-2-14a. Kidnaping; penalty.**

23 (a) Any person who unlawfully restrains another person with

1 the intent:

2 (1) To hold another person for ransom, reward or concession;

3 (2) To transport another person with the intent to inflict
4 bodily injury or to terrorize the victim or another person; or

5 (3) To use another person as a shield or hostage, ~~shall be~~ is
6 guilty of a felony and, upon conviction, shall be punished by
7 confinement by the division of corrections for life, and,
8 notwithstanding the provisions of article twelve, chapter sixty-two
9 of this code, ~~shall~~ is not ~~be~~ eligible for parole; Provided, That
10 a person who is under eighteen years of age at the time of the
11 offense and is convicted under this section shall be punished by a
12 term of imprisonment of not less than fifteen years or for life. A
13 person imprisoned pursuant to the provisions of this section is not
14 eligible for parole prior to having served a minimum of fifteen
15 years of his or her sentence or the minimum period required by the
16 provisions of section thirteen, article twelve, chapter sixty-two,
17 whichever is greater.

18 (b) The following exceptions shall apply to the penalty
19 contained in subsection (a):

20 (1) A jury may, in ~~their~~ its discretion, recommend mercy, and
21 if such recommendation is added to ~~their~~ its verdict, such person
22 ~~shall be~~ is eligible for parole in accordance with the provisions
23 of ~~said~~ article twelve;

24 (2) If ~~such~~ a person pleads guilty, the court may, in its

1 discretion, provide that ~~such~~ the person ~~shall be~~ is eligible for
2 parole in accordance with the provisions of ~~said~~ article twelve,
3 and, if the court so provides, ~~such~~ the person shall be eligible
4 for parole in accordance with the provisions of said article twelve
5 in the same manner and with ~~like~~ similar effect as if ~~such~~ the
6 person had been found guilty by the verdict of a jury and the jury
7 had recommended mercy;

8 (3) In all cases where the person against whom the offense is
9 committed is returned, or is permitted to return, alive, without
10 bodily harm having been inflicted upon him, but after ransom, money
11 or other thing, or any concession or advantage of any sort has been
12 paid or yielded, the punishment shall be confinement by the
13 division of corrections for a definite term of years not less than
14 twenty nor more than fifty; or

15 (4) In all cases where the person against whom the offense is
16 committed is returned, or is permitted to return, alive, without
17 bodily harm having been inflicted upon him or her, but without
18 ransom, money or other thing, or any concession or advantage of any
19 sort having been paid or yielded, the punishment shall be
20 confinement by the division of corrections for a definite term of
21 years not less than ten nor more than thirty.

22 (c) For purposes of this section: "To use another as a
23 hostage" means to seize or detain and threaten to kill or injure
24 another in order to compel, a third person or a governmental

1 organization to do or abstain from doing any legal act as an
2 explicit or implicit condition for the release of the person
3 detained.

4 (d) Notwithstanding any other provision of this section, if a
5 violation of this section is committed by a family member of a
6 minor abducted or held hostage and he or she is not motivated by
7 monetary purposes, but rather intends to conceal, take, remove the
8 child or refuse to return the child to his or her lawful guardian
9 in the belief, mistaken or not, that it is in the child's interest
10 to do so, he or she shall be guilty of a felony and, upon
11 conviction thereof, be confined in a correctional facility for not
12 less than one or more than five years or fined not more than one
13 thousand dollars, or both.

14 (e) Notwithstanding any provision of this code to the
15 contrary, where a law-enforcement agency of this state or a
16 political subdivision ~~thereof~~ receives a complaint that a violation
17 of the provisions of this section has occurred, the receiving
18 law-enforcement agency shall notify any other law-enforcement
19 agency with jurisdiction over the offense, including, but not
20 limited to, the state police and each agency so notified, shall
21 cooperate in the investigation ~~forthwith~~ immediately.

22 (f) It shall be a defense to a violation of subsection (d) of
23 this section, that the accused's action was necessary to preserve
24 the welfare of the minor child and the accused promptly reported

1 his or her actions to a person with lawful custody of the minor, to
 2 law-enforcement or to Child Protective Services division of the
 3 Department of Health and Human Resources.

4 **CHAPTER 62. CRIMINAL PROCEDURE.**

5 **ARTICLE 3. TRIAL OF CRIMINAL CASES.**

6 **§62-3-15. Verdict and sentence in murder cases.**

7 If a person indicted for murder ~~be~~ is found by the jury guilty
 8 ~~thereof~~ guilty by the jury, ~~they~~ the jury shall in ~~their~~ its
 9 verdict find whether he or she is guilty of murder of the first
 10 degree or second degree. If the person is eighteen years of age or
 11 older and is indicted for murder ~~is~~ and found guilty by the jury
 12 ~~guilty thereof,~~ and if the jury find in ~~their~~ its verdict that he
 13 or she is guilty of murder of the first degree, or if a person is
 14 eighteen years of age or older and is indicted for murder and
 15 pleads guilty of murder of the first degree, he or she shall be
 16 punished by imprisonment in ~~the penitentiary~~ a correctional
 17 facility for life, and he or she, notwithstanding the provisions of
 18 article twelve, chapter sixty-two of this code, ~~shall not be~~ is not
 19 eligible for parole: *Provided,* That the jury may, in ~~their~~ its
 20 discretion, recommend mercy, and if such recommendation is added to
 21 ~~their~~ its verdict, ~~such~~ the person ~~shall be~~ is eligible for parole
 22 in accordance with the provisions of said article twelve, except
 23 that, notwithstanding any other provision of this code to the

1 contrary, ~~such~~ the person shall is not ~~be~~ eligible for parole until
2 he or she has served fifteen years: *Provided, however,* That if the
3 accused pleads guilty of murder of the first degree, the court may,
4 in its discretion, provide that ~~such~~ the person shall-be is
5 eligible for parole in accordance with the provisions of said
6 article twelve, and, if the court so provides, such person shall be
7 eligible for parole in accordance with the provisions of ~~said~~ that
8 article twelve in the same manner and with like effect as if ~~such~~
9 the person had been found guilty by the verdict of a jury and the
10 jury had recommended mercy, except that, notwithstanding any
11 provision of ~~said~~ article twelve or any other provision of this
12 code to the contrary, the person shall is not ~~be~~ eligible for
13 parole until he or she has served fifteen years.

14 **§62-3-22. Legislative findings.**

15 (a) Nationally, eighty percent of juveniles serving life
16 sentences reported witnessing violence in their homes and more than
17 fifty percent witnessed weekly violence in their neighborhoods.

18 (b) Nearly fifty percent of all children sentenced to life
19 imprisonment without parole have been physically abused and twenty
20 percent of juveniles serving life sentences have been sexually
21 abused.

22 (c) As stated by the United States Supreme Court in *Miller v.*
23 *Alabama*, 132 S. Ct. 2455 (2012), "only a relatively small
24 proportion of adolescents" who engage in illegal activity "develop

1 entrenched patterns of problem behavior" and that "developments in
2 psychology and brain science continue to show fundamental
3 differences between juvenile and adult minds," including "parts of
4 the brain involved in behavior control."

5 (d) Further, the U.S. Supreme Court noted that children "are
6 more vulnerable to negative influences and outside pressures,
7 including from their family and peers," and "they have limited
8 control over their own environment and lack the ability to
9 extricate themselves from horrific, crime-producing settings."

10 (e) The U.S. Supreme Court lastly emphasized, "the distinctive
11 attributes of youth diminish the penological justifications for
12 imposing the harshest sentences on juvenile offenders, even when
13 they commit terrible crimes."

14 (f) Youthfulness both lessens a juvenile's moral culpability
15 and enhances the prospect that, as a youth matures into an adult
16 and neurological development occurs, these individuals can become
17 contributing members of society.

18 (g) The United States is the only country in the world that
19 allows children to be sentenced to life imprisonment without parole
20 and is one of only three countries that has not ratified the United
21 Nations Convention on the Rights of the Child which protects
22 juvenile offenders from "torture or other cruel, inhuman or
23 degrading treatment."

24 (h) Article 37 of the U.N. Convention on the Rights of the

1 Child categorically bars the imposition of "capital punishment or
2 life without the possibility of release for offenses committed by
3 persons below 18 years of age."

4 (i) Children are constitutionally different from adults and
5 criminal sentences must take their status as children, and the
6 accompanying emotional, psychological and developmental differences
7 into account.

8 (j) Life imprisonment without parole for juvenile offenders is
9 a violation of human rights, international norms and the
10 constitutional prohibition on cruel and unusual punishment.

11 (k) The purpose of this section is to prohibit life
12 imprisonment without parole for juveniles, establish parole review
13 mechanisms for juveniles sentenced in adult court, and establish
14 sentencing procedures prior to the sentencing of juveniles who are
15 tried and convicted in adult court in line with the meaning and
16 spirit of *Roper v. Simmons*, 125 S. Ct. 1183 (2005); *Graham v.*
17 *Florida*, 133 S. Ct. 1799 (2010); *J.D.B v. North Carolina*, 131 S.
18 Ct. 502 (2011); and *Miller v. Alabama*, 132 S. Ct. 2455 (2012).

19 **§62-3-23. Factors to be considered prior to sentencing a juvenile**
20 **convicted as an adult.**

21 (a) In determining the appropriate sentence to be imposed on
22 a juvenile who has been transferred to the criminal jurisdiction of
23 the court pursuant to section ten, article five, chapter forty-nine

1 of this code and who has been subsequently tried and convicted of
2 an offense as an adult, the court shall consider the following
3 mitigating circumstances:

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

5 (2) Impetuosity;

6 (3) Family and community environment;

7 (4) Ability to appreciate the risks and consequences of the
8 conduct;

9 (5) Intellectual capacity;

10 (6) The outcomes of a comprehensive mental health evaluation
11 conducted by an mental health professional licensed to treat
12 adolescents in the State of West Virginia;

13 (7) Peer or familial pressure;

14 (8) Level of participation in the offense;

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

16 (10) Capacity for rehabilitation;

17 (11) School records and special education evaluations;

18 (12) Trauma history;

19 (13) Faith and community involvement;

20 (14) Involvement in the child welfare system; and

21 (15) Any other mitigating factor or circumstances.

22 (b) Prior to sentencing a juvenile under this section, the
23 court shall consider the outcomes of a comprehensive mental health
24 evaluation conducted by an mental health professional licensed to

1 treat adolescents in the State of West Virginia. The comprehensive
2 mental health evaluation must include the following:

- 3 (1) Family interviews;
- 4 (2) Prenatal history;
- 5 (3) Developmental history;
- 6 (4) Medical history;
- 7 (5) History of treatment for substance use;
- 8 (6) Social history; and
- 9 (7) A psychological evaluation.

10 **ARTICLE 12. PROBATION AND PAROLE.**

11 **§62-12-13b. Special parole considerations for persons convicted**
12 **as juveniles.**

13 (a) Unless subject to earlier parole eligibility pursuant to
14 the provisions of section thirteen, article twelve, chapter
15 sixty-two or other statutory provisions, a prisoner who was a
16 juvenile at the time of the offense or multiple offenses and was
17 tried and sentenced as an adult, is eligible for parole no later
18 than his or her fifteenth year of incarceration. The Parole Board
19 shall ensure that the hearing to consider parole under this
20 subsection provides a meaningful opportunity to obtain release and
21 shall promulgate rules and guidelines consistent with existing case
22 law.

23 (b) During a parole hearing involving a prisoner who was
24 convicted and sentenced as a juvenile, the Parole Board shall take

1 into consideration the diminished culpability of juveniles as
2 compared to that of adults, the hallmark features of youth, and any
3 subsequent growth and increased maturity of the prisoner during
4 incarceration. The board shall also consider the following:

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

6 (2) Participation in available rehabilitative and educational
7 programs while in prison;

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

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

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

11 (6) Efforts made toward rehabilitation;

12 (7) Evidence of remorse; and

13 (8) Any other factors or circumstances the board considers
14 relevant.

NOTE: The purpose of this bill is to prevent juveniles convicted of first degree murder from being sentenced to life without parole, and to provide considerations for courts to make when sentencing juveniles tried and convicted as adults.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§62-3-22, §62-3-23 and §62-12-13b are new; therefore, have been completely underscored.