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S.B. 256
133rd General Assembly

Bill Analysis

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Version: As Passed by the Senate

Primary Sponsors: Sens. Manning and Lehner

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SUMMARY

- Provides special parole eligibility dates for persons serving a prison sentence for an offense other than an “aggravated homicide offense” (a defined term) committed when under age 18, or serving consecutive prison sentences for multiple offenses, none of which is an aggravated homicide offense, committed when under age 18 (but see the next dot point).
- Specifies that a person serving a sentence for an aggravated homicide offense, or for the offense of terrorism when the most serious underlying offense in the terrorism was aggravated murder or murder, committed when under age 18 is not eligible for parole review other than in accordance with the sentence imposed for the offense.
- Requires the Parole Board to consider specified mitigating factors for persons eligible for parole under either provision described above.
- Specifies that if the Parole Board denies release for a person eligible for parole under either provision described above, the Board must conduct a subsequent release review not later than five years after the denial.
- Specifies that if a person is convicted of rape, terrorism, aggravated murder or murder, or any other felony committed when under age 18, or if a person is sentenced under the Sexually Violent Predator Sentencing Law for an offense committed when under age 18, the court may not sentence the person to life imprisonment without parole.
- Specifies a number of factors that must be considered as mitigating factors, in addition to other factors that currently must be considered, when a court is sentencing a person who is convicted of a felony committed when under age 18.

DETAILED ANALYSIS

Parole eligibility when offense is committed by a minor

Introduction and overview

A person who violates a criminal provision when under age 18 can be convicted of a crime, as opposed to being found to be a delinquent child, and sentenced to imprisonment in a state correctional institution. This occurs when the minor commits certain acts that, if committed by an adult, would be a serious offense, in which case the minor might be bound over for trial as an adult or adjudicated a serious youthful offender in Juvenile Court.

The Pardon, Parole, and Probation Law specifies when a prisoner becomes eligible for parole. It also provides the Adult Parole Authority with the authority to grant an eligible prisoner parole.¹ Currently, under that Law, a prisoner's eligibility for parole is not affected by the prisoner's age at the time of their offense and the Authority is not required to consider that age in determining the prisoner's fitness for parole.

Applicability of parole eligibility provisions

The bill revises the eligibility requirements that apply to a prisoner who is imprisoned for one or more offenses committed when the prisoner was under age 18. Regardless of whether the prisoner's stated prison term (broadly, the term imposed by the sentencing court, subject to adjustments) includes any mandatory time, the requirements apply automatically and cannot be limited by the sentencing court.² These revised requirements apply to the parole eligibility of all prisoners described in the bill, regardless of when the prisoner committed or was sentenced for the offense.³

Eligibility for parole

Sentence other than for an aggravated homicide offense

Under the bill, a prisoner who was under age 18 at the time of the offense and who is serving a prison sentence for an offense other than an aggravated homicide offense, or who is serving consecutive prison sentences for multiple offenses none of which is an aggravated homicide offense, is eligible for parole as follows:⁴

1. Generally, the prisoner is eligible for parole after serving 18 years in prison.
2. If the prisoner is serving a sentence for one or more homicide offenses, none of which are aggravated homicide offenses, the prisoner is eligible for parole after serving 25 years.

¹ R.C. Chapter 2967.

² R.C. 2967.132(B) and R.C. 2929.01(FF), not in the bill.

³ R.C. 2967.132(I) and Section 6(B).

⁴ R.C. 2967.132(C).

3. But, if the prisoner is serving a sentence for one or more offenses and the sentence permits parole earlier than the above dates, the prisoner is eligible for parole after serving the period of time specified in the sentence.

Sentence for aggravated homicide offense or terrorism involving a murder

The above revisions on parole eligibility do not apply to two types of sentences, even though the prisoner committed the offense when the person was under age 18: (1) a sentence for an aggravated homicide offense, or (2) a sentence for terrorism when the most serious underlying offense was aggravated murder or murder. For these two types of sentences, the prisoner becomes eligible for parole review in accordance with the sentence.⁵

Definition of “aggravated homicide offense” and “homicide offense”

The bill defines “aggravated homicide offense” and “homicide offense” for purposes of its provisions described above as follows:⁶

“Aggravated homicide offense” means any of the following that involved the purposeful killing of three or more persons, when the offender is the principal offender in each offense: (1) the offense of aggravated murder, or (2) any other offense or combination of offenses that involved the purposeful killing of three or more persons.

“Homicide offense” means the offense of murder, voluntary manslaughter, involuntary manslaughter, or reckless homicide or the offense of aggravated murder that is not an aggravated homicide offense.

Parole considerations and mitigating factors

Under the bill, once a prisoner becomes eligible for parole under the provisions described above, the Parole Board is required, within a reasonable time after the prisoner becomes eligible, to conduct a hearing to consider the prisoner’s release on parole under parole supervision. The Board is required to conduct the hearing in the same manner as other parole hearings: in accordance with the Victim’s Rights Law,⁷ the Pardon, Parole, and Probation Law, the Adult Parole Authority Law,⁸ and the Board’s policies and procedures. The Board’s policies and procedures must permit the prisoner’s privately retained counsel or the State Public Defender to appear at the prisoner’s hearing to make a statement in support of the prisoner’s release.⁹

⁵ R.C. 2967.132(D).

⁶ R.C. 2967.132(A).

⁷ R.C. Chapter 2930.

⁸ R.C. Chapter 5149.

⁹ R.C. 2967.132(E)(1).

The bill requires the Parole Board to ensure that the review process provides the prisoner a meaningful opportunity to obtain release.¹⁰ In addition to any other factors the Board is required or authorized to consider, the bill requires the Board to consider the following factors as mitigating factors:¹¹

1. The prisoner's chronological age at the time of the offense and that age's hallmark features, including intellectual capacity, immaturity, impetuosity, and a failure to appreciate risks and consequences;
2. The prisoner's family and home environment at the time of the offense, the prisoner's inability to control the prisoner's surroundings, a history of trauma regarding the prisoner, and the prisoner's school and special education history;
3. The circumstances of the offense, including the extent of the prisoner's participation in the conduct and the way familial and peer pressures may have impacted the prisoner's conduct;
4. Whether the prisoner might have been charged and convicted of a lesser offense if not for the incompetencies associated with youth such as the prisoner's inability to deal with police officers and prosecutors during the prisoner's interrogation or possible plea agreement, or the prisoner's inability to assist the prisoner's own attorney;
5. Examples of the prisoner's rehabilitation, including any subsequent growth or increase in the offender's maturity during imprisonment.

Grant or denial of parole – actions required

If the Parole Board grants the prisoner parole under the provisions described above, it must impose appropriate terms and conditions of release. If the Parole Board denies the prisoner release, it must conduct a subsequent release review not later than five years after denying release.¹²

Notification of prisoner's eligibility for review

In addition to any other notice required, the bill requires the Parole Board to notify the State Public Defender, the victim, and the appropriate prosecuting attorney of the prisoner's eligibility for review under the bill's provisions at least 60 days before the Board begins any review or proceedings involving that prisoner.¹³

Conforming changes

The bill amends several provisions of existing law to conform to the bill's provisions described above:

¹⁰ R.C. 2967.132(E)(2).

¹¹ R.C. 2967.132(E)(2).

¹² R.C. 2967.132(F) and (G) and R.C. 2967.131, not in the bill.

¹³ R.C. 2967.132(H).

1. It amends the current provision of the Pardon, Parole, and Probation Law governing parole eligibility to specify that those provisions do not apply with respect to offenses committed when the offender was under age 18 at the time of the offense and is subject to the bill's parole provisions.¹⁴
2. It specifies that an offender's parole eligibility must be determined under the bill's provisions if the offender receives or received a sentence of imprisonment when the offender committed the offense when the offender was under age 18.¹⁵
3. It expressly applies to the parole or re-parole of any prisoner described under the bill the current provision of the Adult Parole Authority Law allowing a Parole Board hearing officer, Parole Board member, or the Office of Victims' Services to petition the Board for a full Board hearing that relates to a proposed parole or re-parole of a prisoner.¹⁶

Sentencing provisions

No imposition of sentence of life imprisonment without parole if offense committed when under age 18

The bill prohibits a court from imposing a sentence of life imprisonment without parole on any person for an offense that was committed when the person was under age 18. Under current law, offenses for which a sentence of life imprisonment is possible include rape, terrorism, aggravated murder, and murder.

For the offense of terrorism, if the most serious underlying specified offense is murder or a first degree felony, current law requires the offender be sentenced to life imprisonment without parole; for aggravated murder, the offender must be sentenced to death or life imprisonment without parole. The bill revises this penalty if the offender was under age 18 at the time of the commission of the offense, in which case the offender must be sentenced to a term of 30 years to life.

A similar change is made to offenders sentenced to life without parole under the Sexually Violent Predator Law. Under current law, an offender who was sentenced under that law for aggravated murder, murder, or forcible rape of a young child is sentenced to life without parole. The bill requires the court to instead sentence the person to an indefinite term of 30 years to life if the offense was committed when the person was under age 18. In all other cases when the offender committed the offense when under age 18, the court may sentence the person to any other authorized sanction for the offense, but the person's parole eligibility is determined pursuant to the bill's parole eligibility provisions.¹⁷

¹⁴ R.C. 2967.13.

¹⁵ R.C. 2971.03(C) and (G).

¹⁶ R.C. 5149.101.

¹⁷ R.C. 2907.02(B), 2909.24, 2929.02(A) and (B), 2929.03(A), (C), (D), (E), and (H), 2929.06, 2929.07(A), and 2971.03(A)(1), (2), (4), and (5).

Mitigating factors

Similar to the bill's mitigating factors relating to parole, the bill specifies a number of factors that must be considered as mitigating factors, in addition to other factors that currently must be considered, when a court is sentencing a person for a felony committed when the person was under age 18. Currently, at the sentencing hearing conducted for any felony offender, the court, before imposing sentence, must consider the record, any information presented at the hearing by the offender, the prosecuting attorney, the victim or representative, or any other person, the presentence investigation report if one was prepared, and any victim impact statement.¹⁸

Under the bill, if a court is sentencing a person for a felony committed when the offender was under age 18, the court also must consider youth and its characteristics as mitigating factors, including:¹⁹

1. The offender's chronological age at the time of the offense and that age's hallmark features, including intellectual capacity, immaturity, impetuosity, and a failure to appreciate risks and consequences;
2. The offender's family and home environment at the time of the offense, the offender's inability to control the offender's surroundings, a history of trauma regarding the offender, and the offender's school and special education history;
3. The circumstances of the offense, including the extent of the offender's participation in the conduct and the way familial and peer pressures may have impacted the offender's conduct;
4. Whether the offender might have been charged and convicted of a lesser offense if not for the incompetencies associated with youth, such as the offender's inability to deal with police officers and prosecutors during the offender's interrogation or possible plea agreement or the offender's inability to assist the offender's own attorney;
5. Examples of the offender's rehabilitation, including any subsequent growth or increase in maturity during confinement.

Applicability of all sentencing-related provisions

The bill's sentencing provisions apply to both of the following:²⁰

1. All offenses described in those provisions that are committed on or after the bill's effective date;

¹⁸ R.C. 2929.19(B)(1)(a).

¹⁹ R.C. 2929.19(B)(1)(b).

²⁰ Section 6(A).

2. All offenses described in those provisions that were committed prior to the bill's effective date if, as of that date, the offender has not been sentenced for the particular offense.

HISTORY

Action	Date
Introduced	12-23-19
Reported, S. Judiciary	09-16-20
Passed Senate (29-4)	09-23-20