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133rd General Assembly

Final Analysis

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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” committed when under 18, or serving consecutive prison sentences for multiple offenses, none of which is an aggravated homicide offense, committed when under 18.
- 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 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 18, or if a person is sentenced under the Sexually Violent Predator Sentencing Law for an offense committed when under 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 must be considered under continuing law, when a court is sentencing a person who is convicted of a felony committed when under 18.
- Allows for limited continuances in abuse, neglect, and dependency proceedings for good cause shown.

DETAILED ANALYSIS

Parole eligibility when offense is committed by a minor

Applicability of parole eligibility provisions

The act revises the eligibility requirements that apply to a prisoner who is imprisoned for one or more offenses committed when the prisoner was under 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.¹ These revised requirements apply to the parole eligibility of all prisoners described in the act, regardless of when the prisoner committed or was sentenced for the offense. For purposes of the act, a prisoner is "serving" a prison sentence for an offense if on or after April 12, 2021, the prisoner is serving a prison sentence for that offense, regardless of when the sentence was imposed or the offense was committed.²

Eligibility for parole

Sentence other than for an aggravated homicide offense

Under the act, a prisoner who was under 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:³

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, and (3) below does not apply, the prisoner is eligible for parole after serving 25 years.
3. If the prisoner is serving a sentence for two or more homicide offenses, none of which are an aggravated homicide offense, and the offender was the principal offender in two or more of those offenses, the prisoner is eligible for parole after serving 30 years.
4. But, if the prisoner is serving a sentence for one or more offenses and the sentence permits parole earlier than these above, the prisoner is eligible for parole after serving the period of time specified in the sentence.

¹ R.C. 2967.132(B) and R.C. 2929.01(FF), not in the act.

² R.C. 2967.132(I) and Section 3(B).

³ R.C. 2967.132(C).

Sentence for aggravated homicide offense or terrorism involving a murder

The revisions on parole eligibility do not apply to two types of sentences, even though the prisoner committed the offense when the person was under 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.⁴

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

The act defines “aggravated homicide offense” and “homicide offense” for purposes of its provisions as follows:⁵

“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 act, once a prisoner becomes eligible for parole under the act’s provisions, the Parole Board must, within a reasonable time after the prisoner becomes eligible, conduct a hearing to consider the prisoner’s release on parole under parole supervision. The Board must conduct the hearing in the same manner as other parole hearings: in accordance with the Victim’s Rights Law,⁶ the Pardon, Parole, and Probation Law, the Adult Parole Authority Law,⁷ 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 hearing to make a statement in support of the prisoner’s release.⁸

The Parole Board must ensure that the review process provides the prisoner a meaningful opportunity to obtain release.⁹ In addition to any other factors the Board is required

⁴ R.C. 2967.132(D).

⁵ R.C. 2967.132(A).

⁶ R.C. Chapter 2930.

⁷ R.C. Chapter 5149.

⁸ R.C. 2967.132(E)(1).

⁹ R.C. 2967.132(E)(2).

or authorized to consider, the act requires the Board to consider the following factors as mitigating factors:¹⁰

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; and
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 as described above, it must impose appropriate terms and conditions of release. If the Board denies the prisoner release, it must conduct a subsequent release review not later than five years after denying release.¹¹

Notification of prisoner's eligibility for review

In addition to any other notice required, the Parole Board must notify the State Public Defender, the victim, and the appropriate prosecuting attorney of the prisoner's eligibility for review under the act's provisions at least 60 days before the Board begins any review or proceedings involving that prisoner.¹²

Conforming changes

The act amends several provisions of law to conform to the act's provisions:

1. It amends the provisions of the Pardon, Parole, and Probation Law governing parole eligibility to specify that those provisions do not apply with respect to offenses

¹⁰ R.C. 2967.132(E)(2).

¹¹ R.C. 2967.132(F) and (G) and R.C. 2967.131, not in the act.

¹² R.C. 2967.132(H).

committed when the offender was under 18 at the time of the offense and is subject to the act's parole provisions.¹³

2. It specifies that an offender's parole eligibility must be determined under the act's provisions if the offender receives or received a sentence of imprisonment when the offender committed the offense when the offender was under 18.¹⁴
3. It expressly applies, to the parole or re-parole of any prisoner described under the act, the continuing law allowing the Adult Parole Authority Law 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.¹⁵

Sentencing provisions

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

The act 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 18. Under continuing law, offenses for which a sentence of life imprisonment is otherwise 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, preexisting law (continuing in part) 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 act revises this penalty if the offender was under 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. Previously, an offender who was sentenced under the Sexually Violent Predator Law for aggravated murder, murder, or forcible rape of a young child would be sentenced to life without parole. The act 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 18. In all other cases when the offender committed the offense when under 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 act's parole eligibility provisions.¹⁶

¹³ R.C. 2967.13.

¹⁴ R.C. 2971.03(C) and (G).

¹⁵ R.C. 5149.101.

¹⁶ 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 act's mitigating factors relating to parole, the act specifies a number of additional factors that must be considered as mitigating factors when a court is sentencing a person for a felony committed when the person was under 18. Continuing law requires a court sentencing a felony offender to consider, prior to imposing the sentence, 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.¹⁷

If a court is sentencing a person for a felony committed when the offender was under 18, the act requires the court to also consider youth and its characteristics as mitigating factors, including:¹⁸

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; and
5. Examples of the offender's rehabilitation, including any subsequent growth or increase in maturity during confinement.

Applicability of all sentencing-related provisions

The act's sentencing provisions apply to both of the following:¹⁹

1. All offenses described in those provisions that are committed on or after April 12, 2021;
2. All offenses described in those provisions that were committed prior to April 12, 2021, if, as of that date, the offender has not been sentenced for the particular offense.

¹⁷ R.C. 2929.19(B)(1)(a).

¹⁸ R.C. 2929.19(B)(1)(b).

¹⁹ Section 3(A).

Abuse, neglect, and dependency proceedings

The act allows the juvenile court conducting an abuse, neglect, and dependency dispositional hearing to continue the hearing for a reasonable period of time beyond the preexisting 90-day deadline for good cause shown on the court's own motion or on the motion of any party or the child's guardian ad litem. The extension cannot exceed 45 days and such an extension is not available for a case in which the complaint was dismissed and subsequently refiled. This permitted continuance provision replaces a similar limited provision that allowed a continuance for a reasonable time only to enable a party to obtain or consult counsel.²⁰

HISTORY

Action	Date
Introduced	12-23-19
Reported, S. Judiciary	09-16-20
Passed Senate (29-4)	09-23-20
Reported, H. Criminal Justice	12-17-20
Passed House (75-9)	12-17-20
Senate concurred in House amendments (28-1)	12-18-20

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²⁰ R.C. 2151.35(B)(1).