

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 HOUSE BILL 1449

By: Virgin

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5
6 AS INTRODUCED

7 An Act relating to crimes and punishments; directing
8 courts to consider mitigating circumstances when
9 determining sentences of certain persons; providing
10 list of factors and guidelines for imposing sentence;
11 requiring unanimous findings by juries; providing
12 judicial sentencing review for certain persons;
13 authorizing courts to reduce life sentences under
14 certain circumstances; providing for supervised
15 release; directing courts to consider certain factors
16 when considering sentence reduction; allowing
17 defendants to file motions for sentence reduction;
18 directing the Department of Corrections to provide
19 notification to defendants and district attorneys;
20 providing filing and hearing procedures for sentence
21 reduction requests; establishing parole eligibility
22 for certain offenders; making parole eligibility
23 requirements apply retroactively; directing Governor
24 and Pardon and Parole Board to consider certain
factors during parole hearings; authorizing attorney
representation during parole eligibility hearings;
providing for codification; and providing an
effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 69 of Title 21, unless there is
created a duplication in numbering, reads as follows:

1 A. When determining whether to impose a sentence of life
2 imprisonment without the possibility of parole on a person convicted
3 of first-degree murder who was less than eighteen (18) years of age
4 at the time of the commission of the crime, the court shall consider
5 the following mitigating circumstances:

- 6 1. Age at the time of the offense;
- 7 2. Immaturity, impetuosity and the ability to appreciate the
8 risks and consequences of the conduct;
- 9 3. Family and community environment;
- 10 4. Intellectual capacity;
- 11 5. Peer or familial pressure;
- 12 6. Level of participation in the offense;
- 13 7. Ability to participate meaningfully in his or her defense;
- 14 8. Capacity for rehabilitation;
- 15 9. School records and special education evaluations;
- 16 10. Trauma history;
- 17 11. Faith and community involvement;
- 18 12. Involvement in the child welfare system; and
- 19 13. Any other factors or circumstances the court deems
20 relevant.

21 B. Only after examining the factors outlined in subsection A of
22 this section, and finding beyond a reasonable doubt that the
23 defendant is a permanently incorrigible juvenile who is beyond
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1 rehabilitation, may the court impose a sentence of life without
2 parole.

3 C. If the defendant invokes his or her right to jury
4 sentencing, the finding by the jury under subsection B of this
5 section must be unanimous.

6 D. A person who was under eighteen (18) years of age at the
7 time of the offense and sentenced to life without parole for first-
8 degree murder pursuant to the provisions of this section shall have
9 the right to judicial review of his or her sentence as provided in
10 Section 2 of this act after serving thirty (30) calendar years of
11 imprisonment.

12 SECTION 2. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 70 of Title 21, unless there is
14 created a duplication in numbering, reads as follows:

15 A. Notwithstanding any other provision of law to the contrary,
16 a court may reduce a sentence of life without parole imposed on a
17 defendant who was convicted of first-degree murder and who committed
18 the offense before the person was eighteen (18) years of age, if:

19 1. The defendant has served at least thirty (30) calendar years
20 of imprisonment;

21 2. The defendant filed a motion for reduction in sentence; and

22 3. The court finds, after considering the factors set forth in
23 subsection C of this section, that the defendant is not a danger to
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1 the safety of any person or to the community and that the interests
2 of justice warrant a sentence modification.

3 B. A defendant whose sentence is reduced under the provisions
4 of this section must be ordered to serve a period of supervised
5 release of at least five (5) years upon release from imprisonment.

6 C. When determining whether to reduce a term of imprisonment
7 under this section, the court shall consider:

8 1. The nature of the offense committed by the defendant;

9 2. The age of the defendant at the time of the offense;

10 3. A report and recommendation from the Department of
11 Corrections including information relating to the ability of the
12 defendant to comply with the rules of the institution and whether
13 the defendant completed any available educational, vocational or
14 other prison programming;

15 4. A report and recommendation from the district attorney for
16 the county in which the defendant was prosecuted;

17 5. Whether the defendant has demonstrated maturity,
18 rehabilitation and a fitness to reenter society sufficient to
19 justify a sentence reduction;

20 6. A statement by a victim or a family member of a victim who
21 was impacted by the actions of the defendant;

22 7. The family of the defendant and community circumstances at
23 the time of the offense including any history of abuse, trauma or
24 involvement in the child welfare system;

1 8. The diminished culpability of juveniles compared to adults,
2 the hallmark features of youth including immaturity, impetuosity and
3 failure to appreciate risks and consequences which counsel against
4 sentencing juveniles to life without parole; and

5 9. Any additional information the court determines relevant.

6 D. A defendant may make a second motion for a reduction in
7 sentence under this section no earlier than five (5) years after the
8 initial motion for reduction.

9 E. A defendant may make a third and final motion for a
10 reduction in sentence no earlier than five (5) years after the order
11 for a second motion was filed. If the motion is denied, no further
12 motions shall be entertained by the court.

13 F. The Department of Corrections shall provide written notice
14 of this section and its procedures to:

15 1. Any defendant who was sentenced to life without parole for
16 first-degree murder who was less than eighteen (18) years of age at
17 the time of the offense and has served twenty-nine (29) years in
18 prison; and

19 2. The district attorney in the county where the defendant was
20 prosecuted and sentenced.

21 G. An application for a sentence reduction under this section
22 shall be filed as a motion to reduce the sentence of the defendant
23 and may include affidavits or other written material. The motion
24 shall be filed with the sentencing court and a copy shall be served

1 on the district attorney for the county in which the sentence was
2 imposed.

3 H. The court shall conduct a hearing on the motion at which
4 time the defendant and counsel for the defendant shall be given the
5 opportunity to be heard. In a hearing under this section, the court
6 may allow for parties to present evidence. The court shall state in
7 open court and file in writing the reasons for granting or denying a
8 motion under this section.

9 I. Notwithstanding any provision of law to the contrary, if the
10 court grants a motion under this section, the court may reduce the
11 sentence of life without parole to life with the possibility of
12 parole.

13 J. The hearing under this section shall assess whether the
14 defendant has shown signs of rehabilitation, such that life without
15 parole is no longer a permissible sentence under the Constitution of
16 the United States.

17 SECTION 3. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 332.7b of Title 57, unless there
19 is created a duplication in numbering, reads as follows:

20 A. 1. Notwithstanding any other provision of law to the
21 contrary, the following persons are eligible for release on parole:

22 a. a person who was convicted and sentenced for any
23 offenses in which the death of another person did not
24 occur, and the offenses were committed before, on or

1 after November 1, 2019, but before the person was
2 eighteen (18) years of age, shall be retroactively
3 eligible for release on parole after the person has
4 served twenty (20) years of incarceration, unless by
5 law the person is eligible for earlier parole
6 eligibility, or

7 b. a person who was convicted and sentenced for any
8 offenses in which the death of another person
9 occurred, and the offenses were committed before, on
10 or after November 1, 2019, but before the person was
11 eighteen (18) years of age, is eligible for release on
12 parole after the person has served twenty-five (25)
13 years of incarceration, unless by law the person is
14 eligible for earlier parole eligibility.

15 2. The provisions of subparagraph b of paragraph 1 of this
16 subsection shall apply prospectively only to defendants sentenced on
17 or after November 1, 2019; provided, however, the parole eligibility
18 provisions of this section shall not apply to any person sentenced
19 to life without the possibility of parole, unless a judge later
20 modifies his or her sentence under the provisions of Section 2 of
21 this act to life with the possibility of parole.

22 B. Notwithstanding any other provision of law to the contrary,
23 including paragraph 2 of subsection A of this section, a person who
24 was sentenced to life without the possibility of parole before

1 November 1, 2019, for first-degree murder that was committed before
2 the person was eighteen (18) years of age, shall be retroactively
3 eligible for release on parole after the person has served thirty-
4 five (35) years of incarceration.

5 C. The provisions of this section apply regardless of any
6 mandatory minimums, sentencing enhancements or sentences ordered to
7 be served consecutively or concurrently.

8 D. The Governor and Pardon and Parole Board shall ensure that a
9 hearing to consider the parole eligibility of a person under this
10 section takes into account how a juvenile offender is different from
11 an adult offender and provides the person with a meaningful
12 opportunity to be released on parole based on demonstrated maturity
13 and rehabilitation.

14 E. During a parole hearing involving a person under the
15 provisions of this section, the Board shall take into consideration
16 in addition to other factors required by law to be considered by the
17 Board, the following:

- 18 1. The diminished culpability of children as compared to that
19 of adults;
- 20 2. The hallmark features of youth;
- 21 3. Subsequent growth and increased maturity of the person
22 during incarceration;
- 23 4. Age of the person at the time of the offense;
- 24 5. Immaturity of the person at the time of the offense;

1 6. The family of the person and community circumstances at the
2 time of the offense, including any history of abuse, trauma and
3 involvement in the child welfare system;

4 7. The participation of the person in available rehabilitative
5 and educational programs while in prison, if those programs have
6 been made available, or use of self-study for self-improvement;

7 8. Any statement made by a victim or family member of a victim;
8 and

9 9. Other factors the Board deems relevant.

10 F. A person eligible for parole under this section may have an
11 attorney present to represent him or her at the parole eligibility
12 hearing.

13 SECTION 4. This act shall become effective November 1, 2019.

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