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H.774

Introduced by Representative Wizowaty of Burlington

Referred to Committee on

Date:

Subject: Criminal procedures; sentencing; juveniles

Statement of purpose of bill as introduced: This bill proposes to permit a person to ask a court to review a sentence imposed for a crime the person committed before turning 18 years of age, require a court to consider mitigating factors when sentencing a juvenile whose case has been transferred from the Family Division to the Criminal Division, and eliminate life without parole as a sentencing option for crimes committed before a defendant turns 18.

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An act relating to sentencing guidelines and procedures for juveniles

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 13 V.S.A. § 7042a is added to read:

§ 7042a. SENTENCE REVIEW; OFFENSE COMMITTED WHILE

UNDER 18 YEARS OF AGE

(a) A defendant who was under 18 years of age at the time of the offense may file a motion to reduce sentence pursuant to this section. The motion shall

1 be filed in the Criminal Division that imposed the sentence and shall be served
2 on the law enforcement agency that prosecuted the case.

3 (b) A motion to reduce sentence under this section shall include the
4 following provisions:

5 (1) a statement that the defendant was under 18 years of age at the time
6 of the offense;

7 (2) a statement that the defendant has served the greater of 10 years or
8 the statutory minimum for the offense; and

9 (3) a description of the defendant's remorse and efforts at rehabilitation
10 and self-improvement.

11 (c) The Court shall hold a hearing on the motion to reduce the sentence if it
12 finds by a preponderance of the evidence that the statements in the motion are
13 true. The defendant, the defendant's counsel, the prosecuting attorney, and the
14 victim or the victim's family members if the victim is deceased shall have a
15 right to present testimony at the hearing. The Court shall appoint counsel for a
16 defendant who requests counsel and qualifies for the appointment of a public
17 defender under chapter 163 of this title.

18 (d) The Court shall consider the following factors when deciding whether
19 to grant a motion to reduce the sentence under this section:

20 (1) the nature of the offense and the history and characteristics of the
21 defendant;

1 (2) the extent of the defendant's role in the offense and whether and to
2 what extent an adult was involved in the offense;

3 (3) statements by a victim of the offense or by a family member of the
4 victim if the victim is deceased;

5 (4) whether the defendant has demonstrated maturity, rehabilitation,
6 remorse, and a fitness to reenter society sufficient to justify a sentence
7 reduction;

8 (5) the defendant's participation in rehabilitative, educational, or
9 vocational programs, if those programs have been made available, and use of
10 self-study for self-improvement;

11 (6) any physical, mental, or psychiatric examinations of the defendant
12 conducted by licensed health care professionals;

13 (7) the defendant's family and community circumstances at the time of
14 the offense, including any history of abuse, trauma, or involvement with the
15 Department for Children and Families;

16 (8) the diminished culpability of juveniles as compared to that of
17 adults;

18 (9) the hallmark features of youth, including immaturity, impetuosity,
19 and failure to appreciate risks and consequences, which counsel against
20 imposing the harshest sentences on juveniles; and

21 (10) any other information the Court deems relevant to its decision.

1 (e) The Court shall grant the motion and issue a written order to reduce the
2 sentence if it finds that the defendant:

3 (1) was under 18 years of age at the time of the offense;

4 (2) has served the greater of 10 years or the statutory minimum for
5 the offense;

6 (3) has not submitted a motion under this section within the preceding
7 three years;

8 (4) is not a danger to the safety of any person or to the community; and

9 (5) has been rehabilitated and expressed remorse for the offense.

10 (f) If a motion to reduce the sentence under this section is granted, the
11 defendant shall be resentenced pursuant to this chapter as if he or she had not
12 been previously sentenced, provided that the new sentence shall not be greater
13 than the initial sentence less the time the defendant has already served on the
14 sentence.

15 (g) If a motion to reduce the sentence under this section is denied, the
16 defendant may file a motion for resentencing under this section not less than
17 three years after the denial.

1 Sec. 2. 13 V.S.A. § 7045 is added to read:

2 § 7045. SENTENCING JUVENILES TRANSFERRED TO

3 CRIMINAL DIVISION

4 (a) When a person under 18 years of age is convicted of a crime in the
5 Criminal Division, the Court shall consider mitigating factors during
6 sentencing on motion of the defendant or on its own motion. For purposes of
7 this subsection, mitigating factors may include:

8 (1) the defendant's:

9 (A) age at the time of the offense;

10 (B) impetuosity;

11 (C) family and community environment;

12 (D) ability to appreciate the risks and consequences of the conduct;

13 (E) intellectual capacity;

14 (F) the outcomes of a comprehensive mental health evaluation
15 conducted by an adolescent mental health professional licensed in the State of
16 Vermont;

17 (G) peer or familial pressure; level of participation in the offense;

18 (H) ability to participate meaningfully in his or her defense;

19 (J) capacity for rehabilitation;

20 (K) school records and special education evaluations;

21 (L) trauma history;

- 1 (M) emotional, psychological, or physical maturity;
2 (N) faith and community involvement; and
3 (O) involvement in the child welfare system; and
4 (2) any other mitigating factor the Court deems relevant.

5 (b) Prior to sentencing a person under this section, the Court shall order a
6 comprehensive mental health evaluation of the juvenile by an adolescent
7 mental health professional. The evaluation shall be considered by the Court
8 during sentencing and shall include family interviews, prenatal history,
9 developmental history, medical history, substance abuse history, social history,
10 and a psychological evaluation.

11 Sec. 3. 13 V.S.A. § 2303 is amended to read:

12 § 2303. PENALTIES FOR FIRST AND SECOND DEGREE MURDER

13 (a)(1) The punishment for murder in the first degree by a defendant
14 who was 18 years of age or older at the time of the offense shall be
15 imprisonment for:

16 (A) a minimum term of not less than 35 years and a maximum term
17 of life; or

18 (B) life without the possibility of parole.

19 (2) The punishment for murder in the second degree by a defendant who
20 was over 18 years of age at the time of the offense shall be imprisonment for:

1 (A) a minimum term of not less than 20 years and a maximum term
2 of life; or

3 (B) life without the possibility of parole.

4 (3) Notwithstanding any other provision of law, this subsection shall
5 apply only if the murder was committed on or after the effective date of
6 this act.

7 (4) The punishment for murder in the first degree committed prior to the
8 defendant's 18th birthday shall be imprisonment for a minimum term of not
9 less than 15 years and a maximum term of life.

10 (5) The punishment for murder in the second degree committed prior to
11 the defendant's 18th birthday shall be imprisonment for a minimum term of
12 not less than 10 years and a maximum term of life.

13 (b) The punishment for murder in the first degree by a defendant who was
14 over 18 years of age at the time of the offense shall be imprisonment for life
15 and for a minimum term of 35 years unless a jury finds that there are
16 aggravating or mitigating factors which justify a different minimum term. If
17 the jury finds that the aggravating factors outweigh any mitigating factors, the
18 court may set a minimum term longer than 35 years, up to and including life
19 without parole. If the jury finds that the mitigating factors outweigh any
20 aggravating factors, the court may set a minimum term at less than 35 years but
21 not less than 15 years.

1 (c) The punishment for murder in the second degree by a defendant who
2 was over 18 years of age at the time of the offense shall be imprisonment for
3 life and for a minimum term of 20 years unless a jury finds that there are
4 aggravating or mitigating factors which justify a different minimum term. If
5 the jury finds that the aggravating factors outweigh any mitigating factors, the
6 court may set a minimum term longer than 20 years, up to and including life
7 without parole. If the jury finds that the mitigating factors outweigh any
8 aggravating factors, the court may set a minimum term at less than 20 years but
9 not less than 10 years.

10 * * *

11 Sec. 4. 13 V.S.A. § 2311 is amended to read:

12 § 2311. AGGRAVATED MURDER DEFINED

13 * * *

14 (c) The punishment for aggravated murder shall be imprisonment for life
15 and for no lesser term. The court shall not place on probation or suspend or
16 defer the sentence of any person convicted of aggravated murder. A person
17 who was over 18 years of age at the time of the offense who is sentenced under
18 this section shall not be eligible for parole during the term of imprisonment
19 imposed herein and shall not be eligible for work-release or noncustodial
20 furlough except when serious medical services make custodial furlough
21 inappropriate.

1 Sec. 5. 28 V.S.A. § 501 is amended to read:

2 § 501. ELIGIBILITY FOR PAROLE CONSIDERATION

3 An inmate who is serving a sentence of imprisonment shall be eligible for
4 parole consideration as follows:

5 (1) If the inmate's sentence has no minimum term or a zero minimum
6 term, the inmate shall be eligible for parole consideration within 12 months
7 after commitment to a correctional facility.

8 (2) If the inmate's sentence has a minimum term, the inmate shall be
9 eligible for parole consideration after the inmate has served the minimum term
10 of the sentence.

11 (3) Unless eligible for parole under subdivision (1) or (2) of this section,
12 an inmate who was under 18 years of age at the time of the offense shall be
13 eligible for parole consideration no later than 15 years after the inmate was
14 incarcerated.

15 Sec. 6. 28 V.S.A. § 502 is amended to read:

16 § 502. PAROLE INTERVIEWS AND REVIEWS

17 * * *

18 (g) The Board shall ensure that a parole review for an inmate who was
19 under 18 years of age at the time of the offense provides a meaningful
20 opportunity to obtain release. When considering parole under this subsection,
21 the Board shall consider the diminished culpability of juveniles based on brain

1 and developmental differences as compared to that of adults, and the growth
2 and maturity of the inmate since initial incarceration.

3 Sec. 7. EFFECTIVE DATE

4 This act shall take effect on July 1, 2014.