

An Act

ENROLLED SENATE
BILL NO. 1221

By: Sykes and Scott of the
Senate

and

West (Josh) and Wright of
the House

An Act relating to criminal justice; creating the Alyssa Wiles Juvenile Life Without Parole Sentencing Act; providing short title; recognizing unique characteristics of youths when sentencing juveniles for certain offenses; allowing state to request psychological evaluations for certain offenders charged with first-degree murder; directing court to order evaluation upon request by the state; deeming evaluation waived if not timely requested by the state; requiring licensed psychologists or psychiatrists to conduct evaluations; specifying contents of assessments; making records and history of offender available to psychological evaluator; allowing state to file certain notice when sentence of life without parole is warranted; providing time limitation for filing notice; deeming ability to pursue sentence of life without parole waived if notice is filed past deadline; providing time limitation for offenders to file response to notice filed by the state; stating offenders right to jury trial unless waived; directing court to conduct sentencing of offender when found guilty by the jury; requiring court to schedule hearing and consider certain factors and evidence presented at trial; allowing court to impose life without parole or life with possibility of parole upon considering weight of evidence; authorizing victim or representative of victim to appear and make victim impact statement; providing for retroactivity of sentencing procedures

for certain offenders; allowing offenders to file motion requesting postsentencing judicial review; stating factors to be considered by the court at postsentencing judicial review hearing; requiring offender to show clear and convincing evidence that warrants sentence modification; directing state to conduct hearing or provide parole opportunity for certain offenders who have served eighty-five percent (85%) of a life sentence; stating guidelines for determining sentence modification; directing the Department of Corrections to identify certain offenders for sentence modification; directing the Department to certify and send list with offender information to Administrative Office of the Courts; establishing time limitation for scheduling postsentencing judicial review hearing; establishing procedures for postsentencing judicial review hearings; directing state to conduct hearing or provide parole opportunity for offenders convicted of nonhomicide offenses who have served at least twenty-five (25) years; stating factors to be considered by the court at sentence modification hearing; requiring offender to show clear and convincing evidence that warrants sentence modification; directing the Department to identify certain offenders for sentence modification; directing the Department to certify and send list with offender information to Administrative Office of the Courts; establishing time limitation for scheduling postsentencing judicial review hearing; establishing procedures for postsentencing judicial review hearings; providing for parole consideration for certain offenders convicted of homicide and nonhomicide offenses; directing Pardon and Parole Board to take certain circumstances into account during hearing; providing list of factors to be considered by the Board; amending 22 O.S. 2011, Section 926.1, which relates to punishment declared by jury verdict; providing exception for certain juvenile offenders; amending 57 O.S. 2011, Sections 332.1A and 332.1B, which relate to training and qualifications of the Pardon and Parole Board; directing members of the Board to complete annual

training; providing training curriculum topics; changing eligibility qualifications for Board members; providing for codification; providing for noncodification; and providing an effective date.

SUBJECT: Sentencing of juvenile offenders

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

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

Sections 2 through 10 of this act shall be known and may be cited as the "Alyssa Wiles Juvenile Life Without Parole Sentencing Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-5-302 of Title 10A, unless there is created a duplication in numbering, reads as follows:

Sections 3 through 8 of this act shall be known and may be cited as the "Juvenile Life Without Parole Sentencing Act".

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-5-303 of Title 10A, unless there is created a duplication in numbering, reads as follows:

The Legislature recognizes that the unique characteristics of youth call for treating juveniles differently from adults for purposes of sentencing. A sentence of life without parole for a juvenile should be reserved for those rare children whose crimes reflect irreparable corruption and permanent incorrigibility. To ensure sentencing is both individualized and proportionate, the following procedure is established by which the state may seek a life without parole sentence for a charge of murder in the first degree for an offender who was less than eighteen (18) years of age at the time of the commission of the offense.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-5-304 of Title 10A, unless there is created a duplication in numbering, reads as follows:

A. When an offender who was less than eighteen (18) years of age at the time of the commission of the offense is charged with murder in the first degree, prior to the conclusion of the preliminary hearing, the magistrate shall give the state the opportunity to request a psychological evaluation.

B. Upon a request by the state for a psychological evaluation, the court shall order that a psychological evaluation be conducted. If the state does not timely request the psychological evaluation prior to the conclusion of the preliminary hearing, it is deemed waived and the state is prohibited from seeking a sentence of life without parole.

C. The psychological evaluation shall be conducted by a qualified licensed psychologist or psychiatrist and shall include the following assessments:

1. Adjudicative competency of the offender;
2. Maturity or sophistication of the offender;
3. Dangerousness of the offender;
4. Amenability of the offender to treatment; and
5. Capacity of the offender to consider the consequences of his or her acts.

D. The record and history of the offender, including previous contacts with law enforcement agencies and juvenile or criminal courts and prior periods of probation and commitments to juvenile institutions, shall be made available to the psychological evaluator and to the parties of the case.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-5-305 of Title 10A, unless there is created a duplication in numbering, reads as follows:

A. 1. If, after a review of the psychological evaluation and full consideration of the facts and circumstances, the state believes the imposition of a sentence of life without parole is warranted, the state may file a "Notice of Intent to Seek a Sentence of Life Without Parole".

2. The notice shall state the basis upon which the state is requesting the court impose a sentence of life without parole and must be filed no later than thirty (30) days after receipt of the completed psychological evaluation.

3. If the state does not file the "Notice of Intent to Seek a Sentence of Life Without Parole" within the time frame prescribed by law, the ability to pursue a sentence of life without parole is waived and the offender, upon conviction, shall be subject to a sentence for a term of life.

B. If the state files a "Notice of Intent to Seek a Sentence of Life Without Parole" requesting that the offender be sentenced to imprisonment for life without parole eligibility, the offender shall file a response to the notice not more than fifteen (15) days after receiving the notice of intent, unless extended for good cause.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-5-306 of Title 10A, unless there is created a duplication in numbering, reads as follows:

A. The offender shall be entitled to a trial by jury on the issue of guilt unless so waived by both parties. Upon a finding of guilt, the jury shall be discharged and sentencing under the provisions of this act shall be conducted by the court which shall properly consider the youth and attendant circumstances of the offender before imposing a sentence.

B. Following a verdict of guilty, the court shall promptly schedule a hearing and consider evidence related to the "Notice of Intent to Seek a Sentence of Life Without Parole" filed by the state as part of the sentencing process. At the hearing, the court shall consider and weigh the following factors:

1. The chronological age of the offender and its hallmark features to include, but not be limited to, immaturity, impetuosity, and failure to appreciate risks and consequences;

2. Incompetencies associated with youth; for example, inability to deal with police officers or prosecutors or incapacity to assist counsel;

3. Whether the circumstances suggest the possibility of rehabilitation;

4. Adolescent brain development and its effect on behavior and the capacity of the offender to consider the consequences of his or her wrongful acts;

5. Evidence of youth, social background or substance abuse;

6. Whether the crime reflects the transient immaturity of the offender or an irreparable corruption and permanent incorrigibility;

7. The record and history of the offender, including previous contacts with law enforcement agencies and juvenile or criminal courts, prior periods of probation and commitments to juvenile institutions; and

8. Any other criteria the court deems relevant to its decision, including the record of the offender while incarcerated.

C. The court shall consider evidence presented at trial together with any evidence presented at the sentencing hearing. At the conclusion of the hearing and after consideration of all the evidence, if the weight of the evidence establishes that the crimes committed by the offender reflect irreparable corruption and permanent incorrigibility, the court may impose a sentence of life without the possibility of parole. Even if the court finds that the weight of the evidence establishes that the crimes committed by the offender reflect irreparable corruption and permanent incorrigibility, the court may impose a sentence of imprisonment for life with the possibility of parole or imprisonment for life without the possibility of parole.

D. Each victim or representative of the victim shall be afforded the right to appear before the court and make a victim impact statement at any sentencing or resentencing of the offender.

E. To ensure the attendant circumstances of youth have been given due consideration and that sentencing is both individualized and proportionate, the provisions of this section shall apply retroactively to cases in which an offender, who was less than eighteen (18) years of age at the time of the commission of the offense, has been convicted of murder in the first degree but whose case has been remanded to the district court for sentencing.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-5-307 of Title 10A, unless there is created a duplication in numbering, reads as follows:

A. An offender convicted of murder in the first degree, who was less than eighteen (18) years of age at the time of the commission of the offense who has been sentenced to life without parole in accordance with the provisions of the Juvenile Life Without Parole Sentencing Act, may file a motion requesting a postsentencing judicial review hearing after serving not less than eighty-five percent (85%) of a life sentence. The motion shall state grounds to demonstrate maturity and reformation warranting reconsideration by the court of his or her sentence.

B. At the hearing, the court shall consider the following factors:

1. The subsequent growth and increased maturity of the offender during incarceration;

2. The participation of the offender in available rehabilitative and educational programs while in prison, and efforts for self-improvement;

3. The remorse or subsequent insight of the offender related to the circumstances surrounding the crime for which the offender was convicted;

4. A statement by a victim or family member of the victim who was impacted by the actions of the offender; and

5. Any other evidence the court deems as relevant.

C. The postsentencing judicial review shall be conducted informally and the rules of evidence shall not apply. The burden of proof at the hearing shall be on the offender to show by clear and convincing evidence that the offender has gained maturity and reformation while incarcerated, that the offender is not a danger to the safety of any other individual and that the interests of justice warrant a sentence modification.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-5-308 of Title 10A, unless there is created a duplication in numbering, reads as follows:

A. 1. For any offender convicted of murder in the first degree, who was less than eighteen (18) years of age at the time of the commission of the offense, was sentenced prior to the effective date of this act to life without parole and has served at least eighty-five percent (85%) of a life sentence, the state shall:

- a. conduct a hearing, in accordance with Section 6 of this act, before the sentencing court in the county in which the conviction was entered, or
- b. provide the offender with an opportunity for parole consideration.

2. In determining whether a sentence modification is appropriate, the court shall also give consideration to the age-related factors listed in Section 6 of this act. The burden of proof at the hearing shall be on the offender to show by clear and convincing evidence that the offender has gained maturity and reformation while incarcerated, that the offender is not a danger to the safety of any other individual and that the interests of justice warrant a sentence modification.

3. The Department of Corrections shall identify all offenders who have been convicted of a homicide who were less than eighteen (18) years of age at the time of the commission of the offense and sentenced to life without parole prior to the effective date of this act. The Department shall certify and send a comprehensive list to

the Administrative Office of the Courts within sixty (60) days from the effective date of this act. The list shall include the specified date for which each offender will have served at least eighty-five percent (85%) of a life sentence.

4. If the state elects to provide a postsentencing judicial review hearing pursuant to this section, a hearing shall be scheduled and held no more than sixty (60) days following the date the offender has completed eighty-five percent (85%) of his or her sentence of incarceration, unless good cause is shown.

5. Within twenty (20) days after receipt of notice of a sentencing reconsideration hearing, the offender shall file a motion stating the grounds upon which a reduction in sentence is warranted.

6. If the state elects not to pursue a postsentencing judicial review hearing, the state shall provide notice to the court, the offender, and the Pardon and Parole Board of its decision and the offender shall be provided an opportunity for parole consideration as set forth in Section 9 of this act.

B. 1. For any offender convicted of a nonhomicide offense, who was less than eighteen (18) years of age at the time of the commission of the offense, was sentenced prior to the effective date of this act to any sentence that denies the offender a realistic opportunity to obtain release in his or her lifetime, and has served a term of at least twenty-five (25) years, the state shall:

- a. conduct a postsentencing judicial review hearing before the sentencing court in the county in which the conviction was entered, pursuant to the factors listed in Sections 6 and 7 of this act, or
- b. provide the offender with an opportunity for parole consideration.

2. In determining whether a sentence modification is appropriate, the court shall also give consideration to the age-related factors listed in Section 6 of this act. The burden of proof at the hearing shall be on the offender to show by clear and convincing evidence that the offender has gained maturity and reformation while incarcerated, that the offender is not a danger to

the safety of any other individual, and that the interests of justice warrant a sentence modification.

3. The Department of Corrections shall identify all offenders who have been convicted of a nonhomicide offense prior to the effective date of this act who were less than eighteen (18) years of age at the time of the commission of the offense and sentenced to any sentence that denies the offender a realistic opportunity to obtain release in his or her lifetime. The Department of Corrections shall certify and send a comprehensive list to the Administrative Office of the Courts within sixty (60) days from the effective date of this act. The list shall include the specified date for which each offender will have served at least twenty-five (25) years of the sentence.

4. If the state elects to provide a postsentencing judicial review hearing pursuant to this section, a hearing shall be scheduled and held no more than sixty (60) days following the date the offender has completed at least twenty-five (25) years of the sentence of incarceration, unless good cause is shown to extend the time frame for the hearing.

5. Within twenty (20) days after receipt of notice of a postsentencing judicial review, the offender shall file a motion stating the grounds upon which a reduction in sentence is warranted.

6. If the state elects not to pursue a postsentencing judicial review hearing, the state shall provide notice to the court, the offender, and the Pardon and Parole Board of the decision and the offender shall be provided an opportunity for parole consideration as set forth in Section 9 of this act.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 332.7b of Title 57, unless there is created a duplication in numbering, reads as follows:

A. 1. Any offender convicted of first degree murder, who was less than eighteen (18) years of age at the time of the commission of the offense and sentenced to life without parole prior to the effective date of the Juvenile Life Without Parole Sentencing Act, who has served eighty-five percent (85%) of the sentence is eligible for parole consideration within sixty (60) days after receipt of

notice that the state does not intend to pursue a postsentencing judicial review hearing.

2. Any offender convicted of a nonhomicide offense who was less than eighteen (18) years of age at the time of the commission of the offense, who has been sentenced to any sentence that denies the offender a realistic opportunity to obtain release in his or her lifetime prior to the effective date of the Juvenile Life Without Parole Sentencing Act and who has served a term of incarceration of at least twenty-five (25) years, is eligible for parole consideration within sixty (60) days after receipt of notice that the state does not intend to pursue a postsentencing judicial review hearing.

B. The Pardon and Parole Board shall ensure that a hearing to consider parole eligibility of an offender under this section takes into account the attendant circumstances of youth at the time of the commission of the offense and provides the offender with a meaningful opportunity to be released on parole based on demonstrated maturity and reformation.

C. During a parole hearing involving an offender under the provisions of this section, the Board shall take into consideration, in addition to other factors required by law to be considered by the Board, the following:

1. The chronological age of the offender at the time of the commission of the offense;

2. Evidence of youth, social background, or substance abuse at the time of the commission of the offense;

3. The subsequent growth and increased maturity of the person during incarceration;

4. Participation of the offender in available rehabilitative and educational programs while in prison and efforts for self-improvement;

5. The remorse or subsequent insight of the offender related to the circumstances surrounding the crime for which the offender was convicted;

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

7. A statement from the office of the district attorney who prosecuted the case; and

8. Any other factors the Board deems relevant.

SECTION 10. AMENDATORY 22 O.S. 2011, Section 926.1, is amended to read as follows:

Section 926.1. A. In all cases of a verdict of conviction for any offense against any of the laws of the State of Oklahoma, the jury may, and shall upon the request of the defendant, assess and declare the punishment in their verdict within the limitations fixed by law, and the court shall render a judgment according to such verdict, except as hereinafter provided.

B. The provisions of this section shall not apply to an offender who is subject to sentencing pursuant to the Juvenile Life Without Parole Sentencing Act.

SECTION 11. AMENDATORY 57 O.S. 2011, Section 332.1A, is amended to read as follows:

Section 332.1A. A. Each member of the Pardon and Parole Board shall receive at least twelve (12) hours of training for the first year and six (6) hours of training per year thereafter on matters relating to the duties of the Board. The training shall be provided by personnel of the Pardon and Parole Board ~~according to guidelines adopted by the Board.~~

B. Each member of the Pardon and Parole Board shall complete annual training based on guidance from organizations that provide training and technical assistance related to the probation and parole process. Annual training curriculum shall include, but not be limited to, identifying, understanding and targeting criminogenic needs, the principles of effective intervention, core correctional practices and how to support and encourage offender behavior change.

SECTION 12. AMENDATORY 57 O.S. 2011, Section 332.1B, is amended to read as follows:

Section 332.1B. A. To be eligible for appointment as a Pardon and Parole Board member, a person shall possess ~~at least one of the following minimum qualifications:~~

~~1. A a bachelor's degree in the social sciences from an accredited college or university and have at least five (5) years of experience in the criminal one or more of the following fields:~~

~~1. Criminal justice field;~~

~~2. A master's degree and four (4) years of experience in the criminal justice field; or~~

~~3. A juris doctorate and three (3) years of experience in the criminal justice field Parole;~~

~~3. Probation;~~

~~4. Corrections;~~

~~5. Criminal law;~~

~~6. Law enforcement;~~

~~7. Mental health services;~~

~~8. Substance abuse services; or~~

~~9. Social work.~~

B. At least two members of the Pardon and Parole Board shall have five (5) years of training or experience in mental health services, substance abuse services or social work.

SECTION 13. Sections 11 and 12 of this act shall become effective November 1, 2018.

Passed the Senate the 2nd day of May, 2018.

Presiding Officer of the Senate

Passed the House of Representatives the 23rd day of April, 2018.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____