**A** **BILL**

TO AMEND SECTION 17‑25‑20 OF THE 1976 CODE, RELATING TO PUNISHMENT FOR A FELONY WHEN NOT SPECIALLY PROVIDED, TO PROVIDE THAT SOLITARY CONFINEMENT MAY NOT BE DIRECTED FOR A PERSON WHO IS YOUNGER THAN EIGHTEEN YEARS OF AGE; TO AMEND ARTICLE 1, CHAPTER 25, TITLE 17 OF THE 1976 CODE, RELATING TO CONVICTIONS AND SENTENCES, BY ADDING SECTION 17‑25‑35 AND SECTION 17-25-40, TO PROVIDE THAT A COURT SHALL NOT SENTENCE A PERSON TO LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE IF THE PERSON WAS YOUNGER THAN EIGHTEEN YEARS OF AGE AT THE TIME OF COMMITTING THE OFFENSE, TO PROVIDE THAT A COURT MAY ISSUE A SENTENCE LESS THAN THE MINIMUM TERM OTHERWISE REQUIRED BY LAW IF THAT PERSON WAS YOUNGER THAN EIGHTEEN YEARS OF AGE AT THE TIME OF COMMITTING THE OFFENSE, AND TO PROVIDE PAROLE ELIGIBILITY FOR A PERSON CONVICTED AND SENTENCED FOR AN OFFENSE COMMITTED BEFORE HE WAS EIGHTEEN YEARS OF AGE; TO AMEND SECTION 17‑25‑45(E) OF THE 1976 CODE, RELATING TO THE LIFE SENTENCE FOR A PERSON CONVINCED FOR CERTAIN CRIMES, TO PROVIDE THAT A PERSON MAY BE PAROLED IF HE WAS YOUNGER THAN EIGHTEEN YEARS OF AGE AT THE TIME OF COMMITTING AN OFFENSE; TO AMEND ARTICLE 1, CHAPTER 3, TITLE 16 OF THE 1976 CODE, RELATING TO HOMICIDE, BY ADDING SECTION 16‑3‑15, TO PROVIDE THAT A COURT SHALL NOT SENTENCE A PERSON TO DEATH OR TO LIFE IMPRISONMENT WHO WAS YOUNGER THAN EIGHTEEN YEARS OF AGE AT THE TIME OF COMMITTING THE OFFENSE; TO AMEND SECTION 16‑11‑311(B) OF THE 1976 CODE, RELATING TO BURGLARY IN THE FIRST DEGREE, TO PROVIDE THAT THE COURT SHALL NOT SENTENCE A PERSON TO LIFE WHO WAS YOUNGER THAN EIGHTEEN YEARS OF AGE AT THE TIME OF COMMITTING THE OFFENSE; TO AMEND SECTION 24‑13‑100 OF THE 1976 CODE, RELATING TO THE DEFINITION OF A “NO PAROLE OFFENSE”, TO PROVIDE AN EXCEPTION TO A “NO PAROLE OFFENSE” FOR AN OFFENSE COMMITTED BY A PERSON WHO WAS YOUNGER THAN EIGHTEEN YEARS OF AGE AT THE TIME OF COMMITTING THE OFFENSE; TO AMEND ARTICLE 15, CHAPTER 19, TITLE 63 OF THE 1976 CODE, RELATING TO THE DEPARTMENT OF JUVENILE JUSTICE’S COMMITMENT RESPONSIBILITIES, BY ADDING SECTION 63‑19‑1690, TO PROVIDE FOR THE USE OF MECHANICAL OR CHEMICAL RESTRAINTS, ISOLATION, OR ROOM CONFINEMENT; AND TO PROVIDE THAT CERTAIN PROVISIONS APPLY RETROACTIVELY TO A PERSON WHOSE OFFENSE WAS COMMITTED BEFORE HE WAS EIGHTEEN YEARS OF AGE, REGARDLESS OF THE ORIGINAL SENTENCES THAT WERE IMPOSED.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act must be known and may be cited as the “The Youth Sentencing Act of 2019”.

SECTION 2. The General Assembly acknowledges and recognizes that juveniles are constitutionally different from adults and that these differences must be taken into account when juveniles are sentenced for adult crimes. In Miller v. Alabama, 132 S.Ct. 2455 (2012), Roper v. Simmons, 543 U.S. 551 (2005), and Graham v. Florida, 560 U.S. 48 (2010), the United States Supreme Court has noted that “the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes.” Aligned with the principles enunciated by the United States Supreme Court, the Supreme Court of South Carolina held in Aiken v. Byars, 765 S.E. 2d 572 (2014) that there is an “affirmative requirement that courts fully explore the impact of the defendant’s juvenility on the sentence rendered.” Accordingly, the South Carolina Supreme Court ruled all juvenile offenders who were previously subject to a sentence of life imprisonment without the possibility of parole were entitled to resentencing regardless of whether the original sentence imposed was mandatory or permissible. In the wake of these Supreme Court decisions and emerging juvenile brain and behavioral development science, it is the intent of the General Assembly to eliminate life without parole as a sentencing option for juveniles and to create age‑appropriate sentencing and punishment standards in compliance with the United States Constitution for juveniles who commit serious crimes.

SECTION 3. Section 17‑25‑20 of the 1976 Code is amended to read:

“Section 17‑25‑20. When no special punishment is provided for a felony, it shall, at the discretion of the court, be by one or more of the following modes, to wit: Confinement in the Penitentiary or in a workhouse or penal farm, when such institutions shall exist, for a period of not less than three months nor more than ten years, with such imposition of hard labor and solitary confinement as may be directed. Solitary confinement may not be directed for a person who is younger than eighteen years of age.”

SECTION 4. Article 1, Chapter 25, Title 17 of the 1976 Code is amended by adding:

“Section 17‑25‑35. (A) Notwithstanding any other provision of law, a court shall not sentence a person to life imprisonment without the possibility of parole if the person was younger than eighteen years of age at the time of committing the offense.

(B) Notwithstanding any other provision of law, a court may issue a sentence less than the minimum term otherwise required by law if that person was younger than eighteen years of age at the time of committing the offense.

Section 17‑25‑40. (A) A person who was convicted and sentenced for an offense committed before he was eighteen years of age in which the death of another person did not occur is eligible for release on parole no later than after twenty years of incarceration, including any applicable sentencing enhancements, and including an instance in which multiple sentences are to be served consecutively or concurrently, unless by law he is eligible for earlier parole.

(B) A person who was convicted and sentenced for an offense committed before he was eighteen years of age in which the death of another person occurred is eligible for release on parole no later than after twenty‑five years of incarceration, including any applicable sentencing enhancements, unless by law he is eligible for earlier parole.”

SECTION 5. Section 17‑25‑45(E) of the 1976 Code is amended by adding an appropriately numbered new item to read:

“( ) the person was younger than eighteen years of age at the time of committing an offense.”

SECTION 6. Article 1, Chapter 3, Title 16 of the 1976 Code is amended by adding:

“Section 16‑3‑15. Notwithstanding any other provision of law, a court shall not sentence a person to death or to life imprisonment as defined in Section 16-3-20 who was younger than eighteen years of age at the time of committing the offense.”

SECTION 7. Section 16‑11‑311(B) of the 1976 Code is amended to read:

“(B) Burglary in the first degree is a felony punishable by life imprisonment. For purposes of this section, ‘life’ means until death. The court, in its discretion, may sentence the defendant to a term of not less than fifteen years. The court shall not sentence a person to life as defined in this section who was younger than eighteen years of age at the time of committing the offense.”

SECTION 8. Section 24‑13‑100 of the 1976 Code is amended to read:

“Section 24‑13‑100. For purposes of definition under South Carolina law, a ‘no parole offense’ means a class A, B, or C felony or an offense exempt from classification as enumerated in Section 16‑1‑10(d), which is punishable by a maximum term of imprisonment for twenty years or more, unless the offense was committed by a person who was younger than eighteen years of age at the time of committing the offense.”

SECTION 9. Article 15, Chapter 19, Title 63 of the 1976 Code is amended by adding:

“Section 63‑19‑1690. Mechanical or chemical restraint, isolation, or room confinement shall be used only to ensure the immediate safety of an individual or others when no less restrictive intervention has been or is likely to be effective in averting danger. Mechanical or chemical restraint, isolation, or room confinement shall never be used for coercion, retaliation, humiliation, as a threat or form of punishment, in lieu of adequate staffing, as a replacement for active treatment, for staff convenience, or for property damage not involving imminent danger.”

SECTION 10. This act takes effect upon approval by the Governor. The provisions contained in Section 17‑25‑35, Section 17-25-40, and Section 17-25-15(E)(3), as added by this act, shall be applied retroactively to a person whose offense was committed before he was eighteen years of age, regardless of the original sentences that were imposed.

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