**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “YOUTH SENTENCING ACT OF 2021” BY ADDING SECTIONS 16‑3‑15, 17‑25‑35, AND 17‑25‑40 SO AS TO PROHIBIT THE PENALTY OF LIFE IMPRISONMENT FOR ANY INDIVIDUAL WHO IS UNDER THE AGE OF EIGHTEEN AT THE TIME OF COMMITTING AN OFFENSE AND TO PROVIDE MAXIMUM SENTENCES FOR THOSE INDIVIDUALS WHO COMMITTED AN OFFENSE AS A MINOR BEFORE THE EFFECTIVE DATE OF THE ACT; BY ADDING SECTION 63‑19‑1690 SO AS TO PROHIBIT THE USE OF RESTRAINTS, ISOLATION, AND ROOM CONFINEMENT FOR JUVENILE OFFENDERS, WITH EXCEPTIONS; TO AMEND SECTION 16‑11‑311, RELATING TO THE OFFENSE OF BURGLARY IN THE FIRST DEGREE, SO AS TO MAKE CONFORMING CHANGES; TO AMEND SECTION 17‑25‑20, RELATING TO CRIMINAL PUNISHMENTS, SO AS TO PROHIBIT THE USE OF SOLITARY CONFINEMENT FOR A PERSON WHO IS YOUNGER THAN EIGHTEEN YEARS OF AGE; TO AMEND SECTION 17‑25‑45, RELATING TO LIFE SENTENCES FOR PERSONS CONVICTED OF CERTAIN CRIMES, SO AS TO ADD A RIGHT TO COUNSEL FOR A JUVENILE OFFENDER AND FOR OTHER PURPOSES; AND TO AMEND SECTION 24‑13‑100, RELATING TO NO PAROLE OFFENSES, SO AS TO MAKE CONFORMING CHANGES.

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

SECTION 1. This act shall be known and may be cited as the “Youth Sentencing Act of 2021”.

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. The United States Supreme Court has emphasized through its cases 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), 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), 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 the 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. 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 may 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 relevant offense.”

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 may not sentence a person to life imprisonment without the possibility of parole for an offense 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 for an offense 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 the person was eighteen years of age and in which the death of another person did not occur, and that was committed before, on, or after the effective date of this act 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 the person is eligible for earlier parole.

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

(C) Subsections (A) and (B) apply retroactively to a person whose offense was committed before the person was eighteen years of age, regardless of the original sentences that were imposed.”

SECTION 5.A. Section 17‑25‑45 of the 1976 Code is amended by adding appropriately lettered subsections at the end to read:

“( ) A person who was younger than eighteen years of age at the time of committing an offense and who is eligible for parole pursuant to subsection (E)(2) is entitled to representation by counsel. If the person cannot afford counsel, the court of original sentencing jurisdiction shall appoint a public defender to represent the person.

( ) In determining if it is appropriate to grant a person parole pursuant to subsection (E)(2), the Department of Probation, Parole and Pardon Services shall consider any factor it deems appropriate, including all of the following:

(1) the person’s age at the time of the offense;

(2) the nature of the offense and the history and characteristics of the person;

(3) whether the person has substantially complied with the rules of the institution to which the person has been confined and whether the person has completed any educational, vocational, or other program, if available;

(4) whether the person has demonstrated maturity, rehabilitation, and a fitness to reenter society sufficient to justify a sentence reduction;

(5) any statement, provided orally or in writing, by a victim of the offense for which the person is imprisoned, or by a family member of the victim if the victim is deceased;

(6) any report from a physical, mental, or psychiatric examination of the person conducted by a licensed health care professional;

(7) the person’s family and community circumstances at the time of the offense, including any history of abuse, trauma, or involvement in the child welfare system;

(8) the extent of the person’s role in the offense and whether and to what extent an adult was involved in the offense; and

(9) the diminished culpability of juveniles as compared to that of adults, and the hallmark features of youth, including immaturity, impetuosity, and failure to appreciate risks and consequences, which counsel against sentencing juveniles to a lifetime in prison.”

B. Section 17‑25‑45(E) of the 1976 Code is amended to read:

“(E) For the purpose of this section only, a person sentenced pursuant to this section may be paroled if:

(1)(a) the Department of Corrections requests the Department of Probation, Parole and Pardon Services to consider the person for parole; ~~and~~

~~(2)~~(b) the Department of Probation, Parole and Pardon Services determines that due to the person’s health or age he is no longer a threat to society; and

~~(a)~~(c)(i) the person has served at least thirty years of the sentence imposed pursuant to this section and has reached at least sixty‑five years of age; ~~or~~

~~(b)~~(ii) the person has served at least twenty years of the sentence imposed pursuant to this section and has reached at least seventy years of age; ~~or~~

~~(c)~~(iii) the person is afflicted with a terminal illness where life expectancy is one year or less; or

~~(d)~~(iv) the person can produce evidence comprising the most extraordinary circumstances; or

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

SECTION 6. 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 only may be used to ensure the immediate safety of an individual or others if no less restrictive intervention has been, or is likely to be, effective in averting danger. Mechanical or chemical restraint, isolation, or room confinement must never be used for coercion, retaliation, or 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 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 may 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 relevant offense.”

SECTION 8. 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 9. 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 relevant offense.”

SECTION 10. This act takes effect upon approval by the Governor.

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