

LOUISIANA DISTRICT ATTORNEYS ASSOCIATION
PROPOSAL FORM 2016-53

NOTE: Member proposals must be submitted on the following forms to be considered for inclusion as LDAA package or endorsed bills. Refer to the attached samples for guidance in completing these forms.

SUBJECT MATTER (list criminal definition, penalty, or procedure affected):

Procedure for automatically resentencing juvenile homicide offenders who were sentenced to mandatory life without benefit of parole and whose conviction became final prior to *Miller* decision (June 25, 2012).

PRESENT LAW (cite Statute and current function):

Currently provides procedure for juveniles convicted for a non-homicide situation under *Graham* and provides procedure for those currently being tried and sentenced after 2012 *Miller* decision. However, current law does not provide procedure regarding possible parole eligibility for those whose convictions became final prior to *Miller* decision *Montgomery v. Louisiana* decision (Jan 25, 2016) requires the State to give *Miller* sentencing hearing to all juvenile homicide mandatory life without benefit of parole sentences that became final prior to the *Miller* decision.

PROPOSED LAW (proposed change and effect and cite of amended or new statute):

Like *Graham* and *Miller*, provide a new Section to La. R.S .15:574.4. Add Section F.

PROPOSED STATUTORY LANGUAGE (Clearly indicate language added and/or deleted.)

Note: Words in ~~strikethrough~~ are deletions from existing law; words **underscored and boldfaced** are additions.)

F. (1) Notwithstanding any provision of law to the contrary, and subject to the provision of paragraph G of this section, any person serving a sentence of life imprisonment for a conviction of first degree murder (R.S. 14:30) or second degree murder (R.S. 14:30.1) who was under the age of eighteen years at the time of the commission of the offense and whose conviction became final prior to June 25, 2012, shall be eligible for parole consideration pursuant to the provisions of this Subsection if all of the following conditions have been met:

- (a) The offender has served thirty-five years of the sentence imposed.**
- (b) The offender has not committed any major disciplinary offenses in the twelve consecutive months prior to the parole hearing date. A major disciplinary offense is an offense identified as a Schedule B offense by the Department of Public Safety and Corrections in the Disciplinary Rules and Procedures for Adult Offenders.**
- (c) The offender has completed the mandatory minimum of one hundred hours of prerelease programming in accordance with R.S. 15:827.1.**
- (d) The offender has completed substance abuse treatment as applicable.**

(e) The offender has obtained a GED certification, unless the offender has previously obtained a high school diploma or is deemed by a certified educator as being incapable of obtaining a GED certification due to a learning disability. If the offender is deemed incapable of obtaining a GED certification, the offender shall complete at least one of the following:

(i) A literacy program.

(ii) An adult basic education program.

(iii) A job skills training program.

(f) The offender has obtained a low-risk level designation determined by a validated risk assessment instrument approved by the secretary of the Department of Public Safety and Corrections.

(g) The offender has completed a reentry program to be determined by the Department of Public Safety and Corrections.

(2) For each offender eligible for parole consideration pursuant to the provisions of this Subsection, the board shall meet in a three-member panel, and each member of the panel shall be provided with and shall consider a written evaluation of the offender by a person who has expertise in adolescent brain development and behavior and any other relevant evidence pertaining to the offender.

(3) The panel shall render specific findings of fact in support of its decision.

(G) The district attorney may concede, in writing, parole eligibility pursuant to paragraph F, or within two years from the effective date of this act, may petition the court for a sentencing hearing to be conducted in accordance with La. C.Cr.P. art. 878.1.

REASON FOR PROPOSAL (brief description of need for change):

The *Montgomery* decision requires retroactive effect of the *Miller* decision to cases on collateral review. The addition of Section F negates the need for a sentencing hearing on all mandatory life without benefit of parole juveniles whose conviction became final prior to *Miller* decision. Persons whose convictions were obtained post-*Miller* would still proceed under subsection 15:574.4(E) and have their sentencing hearing conducted in accordance with La. C.Cr.P. Art. 878.1.

PROPOSER'S I.D. INFORMATION:

Name & Title: MARK DUMAINE, 1st Assistant District Attorney; DYLAN ALGE, Assistant District Attorney; DALE LEE, Assistant District Attorney; SARAH TIRRELL, Assistant District Attorney.

JD: East Baton Rouge Parish

Address: 222 St. Louis Street, 5th Floor, Baton Rouge, LA, 70802.

Phone: (225) 389-3400 **Fax:** (225) 389-5610

I understand that my participation may be required in ADA Board and ADA Legislative Advisory Committee meetings and/or LDAA Board and LDAA Legislative Committee meetings. If this proposal is accepted as part of the 2016 LDAA Legislative Package, I agree to personally attend legislative committee hearings and be available to testify on any bill filed as a result of this proposal.

Elected District Attorney's Signature (required): HCM

Proposer's Signature (required): MD, DA, DL, ST

Email completed proposals to LEGISLATIVEPROPOSALS@LDAA.ORG

Detailed Reasons Memo (citations, case law, examples, potential opposition, etc.)

MEMORANDUM

**TO: LDAA BOARD OF DIRECTORS
ALL ELECTED DISTRICT ATTORNEYS**

FROM: Hillar C. Moore, III, PROPOSER

DATE: January 26, 2016.

RE: 2016 LEGISLATIVE PROPOSAL

Proposal is a response to the U.S. Supreme Court decision of *Montgomery v. Louisiana*, 577 U.S. ____ (January 25, 2016). *Montgomery* requires that all juveniles (persons below 18) who were convicted of homicide (1st or 2nd degree murder), sentenced to a term of mandatory life without benefit of parole, and whose conviction become final prior to the *Miller v. Alabama*, 183 L.Ed.2d 407 (2012), decision now receive a sentencing hearing to determine if they should receive parole eligibility. According to D.O.C. records, there are well over 200 Louisiana inmates who would receive a *Miller* sentencing hearing to determine if they should become parole eligible. Proposal seeks to stop these hearings from occurring by automatically providing parole eligibility to those juveniles whose convictions became final prior to the *Miller* decision. The *Miller* decision was rendered June 25, 2012. Proposal would make all persons whose convictions became final prior to this date automatically eligible for parole subject to the same conditions previously set forth in 15:574.4(E).

Proposal does not intend to change the law on juvenile convictions that were obtained or became final post-*Miller*. These juveniles either have or will receive a *Miller* sentencing hearing to determine parole eligibility. La. R.S. 15:574.4(E) and La. C.Cr.P. art. 878.1 would continue to govern this situation. For example, those juveniles who have already received an article 878.1 hearing and been sentence to LWOP would retain their LWOP sentence. Those who received parole eligibility after a *Miller* hearing would go under 15:574.4(E), which mirrors proposed 15:574.4(F).

Potential opposition could come in the from the post-2012 convictions who have the *Miller* hearing and do not automatically receive parole eligibility. They will argue that it is fundamentally unfair and/or an equal protection issue to give certain persons automatic parole while they must have a hearing to hopefully receive that same parole. Opposition could also come in the form of contesting the conditions listed in (F), as many of the persons in prison will claim they were unaware they ever had a chance at release. However, the conditions provided in 15:574.4 (D) and (E) have withstood scrutiny, and newly added (F) mirrors the conditions set forth in section (E).

Talking Points (1-2 page explanation of your memo in lay terms)

TALKING POINTS

Preemptive legislation to moot the 200+ hearings that will occur.

Seeks to avoid extreme cost issues associated with having the hearings.

Seeks to avoid difficult witness and evidentiary issues associated with having the hearings.

Seeks to provide uniform result for victims and not put victims through the additional pain and suffering of a hearing.

Seeks to avoid recurring appellate issues that will come with having the hearings.

Seeks to trace *Montgomery*'s language that suggests the best alternative is for the legislature to provide some form of parole eligibility these collateral review cases.

Proposal in Bill Form

SLS / HLS __-____

ORIGINAL

Regular Session 2016

SENATE BILL NO. / HOUSE BILL NO.

BY: SENATOR / REPRESENTATIVE

AN ACT

Be it enacted by the Legislature of Louisiana:

F. (1) Notwithstanding any provision of law to the contrary, any person serving a sentence of life imprisonment for a conviction of first degree murder ([R.S. 14:30](#)) or second degree murder ([R.S. 14:30.1](#)) who was under the age of eighteen years at the time of the commission of the offense and whose conviction became final prior to June 25, 2012, shall be eligible for parole consideration pursuant to the provisions of this Subsection if all of the following conditions have been met:

- (a) The offender has served thirty-five years of the sentence imposed.
- (b) The offender has not committed any major disciplinary offenses in the twelve consecutive months prior to the parole hearing date. A major disciplinary offense is an offense identified as a Schedule B offense by the Department of Public Safety and Corrections in the Disciplinary Rules and Procedures for Adult Offenders.
- (c) The offender has completed the mandatory minimum of one hundred hours of prerelease programming in accordance with [R.S. 15:827.1](#).
- (d) The offender has completed substance abuse treatment as applicable.
- (e) The offender has obtained a GED certification, unless the offender has previously obtained a high school diploma or is deemed by a certified educator as being incapable of obtaining a GED certification due to a learning disability. If the offender is deemed incapable of obtaining a GED certification, the offender shall complete at least one of the following:
 - (i) A literacy program.
 - (ii) An adult basic education program.
 - (iii) A job skills training program.
- (f) The offender has obtained a low-risk level designation determined by a validated risk assessment instrument approved by the secretary of the Department of Public Safety and Corrections.

(g) The offender has completed a reentry program to be determined by the Department of Public Safety and Corrections.

(2) For each offender eligible for parole consideration pursuant to the provisions of this Subsection, the board shall meet in a three-member panel, and each member of the panel shall be provided with and shall consider a written evaluation of the offender by a person who has expertise in adolescent brain development and behavior and any other relevant evidence pertaining to the offender.

(3) The panel shall render specific findings of fact in support of its decision.