

S.261 An act relating to eliminating life without parole  
Senate Judiciary Committee amendment  
January 16, 2020

Sec. 1. Amends the penalties for first and second degree murder to eliminate the option of imposing a LWOP sentence for both pre- and post- Provost murders. Language currently in (a) would apply to everyone who has not been sentenced for murder as of 7/1/20 and the murder is committed on 5/1/2006 or later.<sup>1</sup> The new penalties would apply to anyone who committed murder after 2006 who hasn't yet been sentenced, (including pending charges).

- (a) This subsection of the statute was enacted in 2006 (Act 119) in response to the Provost decision.<sup>2</sup> Sets out penalty for **1<sup>st</sup> degree murder** as 35 years – life. First degree murder is defined in 2301 as murder by means of poison, or by lying in wait, or by willful, deliberate, and premeditated killing, or committed in perpetrating (or attempting to perpetrate) arson, sexual assault, aggravated sexual assault, kidnapping, robbery, or burglary.

Sets out penalty for **2<sup>nd</sup> degree murder** as 20 years – life.

“All other kinds of murder shall be murder in the second degree.”

State v. Johnson sets out intent element of 2<sup>nd</sup> degree murder as: intent to kill, intent<sup>3</sup> to do great bodily harm<sup>4</sup>, or wanton<sup>5</sup> disregard of likelihood of death or great bodily harm.<sup>6</sup>

- (b) & (c) Homicides committed before May 1, 2006, have a different sentencing scheme with the possibility of minimum terms below the presumptive minimum set out in (a).

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<sup>1</sup> See 1 V.S.A. Sec. 214(c) and State v. Flagg. “If the penalty or punishment or any offense is reduced by the amendment of an act or statutory provision, the same shall be imposed in accordance with the act or provision as amended unless imposed prior to the date of the amendment.”

In other words, when the legislature reduces a penalty in statute, the lighter penalty will be imposed for any action that has not reached final judgment. The policy here is to ensure that outdated penalties are not imposed after the legislature has deemed them no longer necessary or appropriate.

<sup>2</sup> Judge can't use discretion to enhance sentence beyond statutory maximum. Jury must make all findings beyond a reasonable doubt for purposes of sentencing.

<sup>3</sup> An intentionally act is done purposely and not inadvertently, because of mistake, or by accident.

<sup>4</sup> Great bodily harm means bodily injury which involves a substantial risk of death, serious permanent disfigurement, or long-term loss or impairment of the function of any part of an organ of the body.

<sup>5</sup> Wanton act is a reckless act done with extreme indifference to the probability that someone would die as a result.

<sup>6</sup> For comparison purposes, voluntary manslaughter has same intent component as 2<sup>nd</sup> degree murder, but crime must be committed under extenuating circumstances that may negate willfulness, such as sudden passion or provocation that would cause a reasonable person to lose control. Involuntary manslaughter intent element is criminal negligence.

Sec. 2. Aggravated murder defined. Amends statute to remove provision that a person sentenced for aggravated murder shall not be eligible for parole. Statute sets forth 8 aggravating factors, at least one of which must be proven beyond a reasonable doubt by the prosecutor in order for a person to be convicted of aggravated murder.

Sec. 3. Consecutive sentences statute. Provides that a person under 26 who is sentenced to multiple terms of imprisonment must serve those sentences concurrently.

Sec. 4 LWOP prohibited. Amends juvenile LOWP prohibition to apply to everyone.

Sec. 5. Purposes of DOC. Amends purpose language to ensure DOC provides programming for a return to the community for all incarcerated offenders.

Sec. 6. July 1, 2020 effective date.