

House Bill 1542

By: Representatives Mallow of the 163rd, Oliver of the 82nd, Jackson of the 165th, Neal of the 74th, and Hutchinson of the 107th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 10 of Title 17 and Article 2 of Chapter 9 of Title 42 of the
2 Official Code of Georgia Annotated, relating to procedure for sentencing and imposition of
3 punishment and grants of pardons, paroles, and other relief, respectively, so as to provide for
4 considerations in sentencing and paroling a defendant who was less than 18 years of age at
5 the time he or she committed a crime; to eliminate the imposition of the death penalty and
6 life without parole for a defendant who was less than 18 years of age at the time he or she
7 committed a crime; to provide for retroactive parole consideration of inmates serving prison
8 sentences for a crime committed when he or she was less than 18 years of age; to provide for
9 cross-references; to provide for related matters; to repeal conflicting laws; and for other
10 purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to
14 procedure for sentencing and imposition of punishment, is amended by revising Code
15 Section 17-10-6, designated as reserved, as follows:

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16 "17-10-6.

17 (a) Notwithstanding Code Sections 17-10-6.1, 17-10-6.2, 42-9-39, and 42-9-45 and any
18 other law to the contrary, in the trial of any case in which the death penalty is sought, if the
19 defendant was under 18 years of age when the crime was committed, the court shall not
20 impose a sentence of death or life without parole.

21 (b) In addition to other factors required by law to be considered prior to the imposition of
22 a sentence, in determining the appropriate sentence for a defendant who was under the age
23 of 18 years when the crime was committed, the court shall consider mitigating factors or
24 circumstances the court deems relevant."

25 **SECTION 2.**

26 Said article is further amended by revising paragraph (2) of subsection (b) and
27 subsections (c) and (f) of Code Section 17-10-6.1, relating to punishment for serious violent
28 offenders and authorization for reduction in mandatory minimum sentencing, as follows:

29 "(2) Except as provided in subsection (e) of this Code section and Code Section 17-10-6,
30 the sentence of any person convicted of the serious violent felony of:

31 (A) Kidnapping involving a victim who is less than 14 years of age;

32 (B) Rape;

33 (C) Aggravated child molestation, as defined in subsection (c) of Code Section 16-6-4,
34 unless subject to the provisions of paragraph (2) of subsection (d) of Code Section
35 16-6-4;

36 (D) Aggravated sodomy, as defined in Code Section 16-6-2; or

37 (E) Aggravated sexual battery, as defined in Code Section 16-6-22.2

38 shall, unless sentenced to life imprisonment, be a split sentence which shall include a
39 mandatory minimum term of imprisonment of 25 years, followed by probation for life,
40 and no portion of the mandatory minimum sentence imposed shall be suspended, stayed,
41 probated, deferred, or withheld by the sentencing court."

42 "(c)(1) Except as otherwise provided in subsection (c) of Code Section 42-9-39 and Code
43 Section 42-9-62, for a first conviction of a serious violent felony in which the accused has
44 been sentenced to life imprisonment, that person shall not be eligible for any form of
45 parole or early release administered by the State Board of Pardons and Paroles until that
46 person has served a minimum of 30 years in prison. The minimum term of imprisonment
47 shall not be reduced by any earned time, early release, work release, leave, or other
48 sentence-reducing measures under programs administered by the Department of
49 Corrections.

50 (2) ~~For~~ Except as provided in Code Section 42-9-62, for a first conviction of a serious
51 violent felony in which the accused has been sentenced to death but the sentence of death
52 has been commuted to life imprisonment, that person shall not be eligible for any form
53 of parole or early release administered by the State Board of Pardons and Paroles until
54 that person has served a minimum of 30 years in prison. The minimum term of
55 imprisonment shall not be reduced by any earned time, early release, work release, leave,
56 or other sentence-reducing measures under programs administered by the Department of
57 Corrections.

58 (3) ~~For~~ Except as provided in Code Section 42-9-62, for a first conviction of a serious
59 violent felony in which the accused has been sentenced to imprisonment for life without
60 parole, that person shall not be eligible for any form of parole or early release
61 administered by the State Board of Pardons and Paroles or for any earned time, early
62 release, work release, leave, or other sentence-reducing measures under programs
63 administered by the Department of Corrections.

64 (4) Except as otherwise provided in this subsection and Code Section 42-9-62, any
65 sentence imposed for the first conviction of any serious violent felony shall be served in
66 its entirety as imposed by the sentencing court and shall not be reduced by any form of
67 parole or early release administered by the State Board of Pardons and Paroles or by any
68 earned time, early release, work release, leave, or other sentence-reducing measures

69 under programs administered by the Department of Corrections, the effect of which
70 would be to reduce the period of incarceration ordered by the sentencing court; provided,
71 however, that during the final year of incarceration an offender so sentenced shall be
72 eligible to be considered for participation in a department administered transitional center
73 or work release program."

74 "(f) ~~Any~~ Except as provided in Code Section 42-9-62, any sentence imposed pursuant to
75 this Code section shall not be reduced by any earned time, early release, work release,
76 leave, or other sentence-reducing measures under programs administered by the
77 Department of Corrections, the effect of which would be to reduce the period of
78 incarceration ordered by the sentencing court or any form of pardon, parole, or
79 commutation of sentence by the State Board of Pardons and Paroles; provided, however,
80 that during the final year of incarceration, a defendant so sentenced shall be eligible to be
81 considered for participation in a Department of Corrections administered transitional center
82 or work release program."

83 **SECTION 3.**

84 Said article is further amended by revising subsection (b) of Code Section 17-10-6.2, relating
85 to punishment for sexual offenders, as follows:

86 "(b) Except as provided in subsection (c) of this Code section and Code Section 42-9-62,
87 and notwithstanding any other provisions of law to the contrary, any person convicted of
88 a sexual offense shall be sentenced to a split sentence which shall include the minimum
89 term of imprisonment specified in the Code section applicable to such sexual offense. No
90 portion of the mandatory minimum sentence imposed shall be suspended, stayed, probated,
91 deferred, or withheld by the court. Any such sentence shall include, in addition to the
92 mandatory term of imprisonment, an additional probated sentence of at least one year;
93 provided, however, that when a court imposes consecutive sentences for sexual offenses,
94 the requirement that the court impose a probated sentence of at least one year shall only

95 apply to the final consecutive sentence imposed. No person convicted of a sexual offense
96 shall be sentenced as a first offender pursuant to Article 3 of Chapter 8 of Title 42 or any
97 other provision of Georgia law relating to the sentencing of first offenders."

98

SECTION 4.

99 Said article is further amended by revising subsections (a), (b), and (e) of Code Section
100 17-10-7, relating to punishment of repeat offenders and punishment and eligibility for parole
101 of persons convicted of a fourth felony offense, as follows:

102 "(a) Except as otherwise provided in subsection (b) or (b.1) of this Code section and Code
103 Section 42-9-62, any person who, after having been convicted of a felony offense in this
104 state or having been convicted under the laws of any other state or of the United States of
105 a crime which if committed within this state would be a felony and sentenced to
106 confinement in a penal institution, commits a felony punishable by confinement in a penal
107 institution shall be sentenced to undergo the longest period of time prescribed for the
108 punishment of the subsequent offense of which he or she stands convicted, provided that,
109 unless otherwise provided by law, the trial judge may, in his or her discretion, probate or
110 suspend the maximum sentence prescribed for the offense.

111 (b)(1) As used in this subsection, the term 'serious violent felony' means a serious violent
112 felony as defined in subsection (a) of Code Section 17-10-6.1.

113 (2) Except as provided in subsection (e) of Code Section 17-10-6.1 and Code Section
114 42-9-62, any person who has been convicted of a serious violent felony in this state or
115 who has been convicted under the laws of any other state or of the United States of a
116 crime which if committed in this state would be a serious violent felony and who after
117 such first conviction subsequently commits and is convicted of a serious violent felony
118 for which such person is not sentenced to death shall be sentenced to imprisonment for
119 life without parole. Any such sentence of life without parole shall not be suspended,
120 stayed, probated, deferred, or withheld, and any such person sentenced pursuant to this

121 paragraph shall not be eligible for any form of pardon, parole, or early release
122 administered by the State Board of Pardons and Paroles or for any earned time, early
123 release, work release, leave, or any other sentence-reducing measures under programs
124 administered by the Department of Corrections, the effect of which would be to reduce
125 the sentence of life imprisonment without possibility of parole, except as may be
126 authorized by any existing or future provisions of the Constitution."

127 "(e) This Code section is supplemental to other provisions relating to ~~recidivous~~ recidivist
128 offenders."

129 **SECTION 5.**

130 Article 2 of Chapter 9 of Title 42 of the Official Code of Georgia Annotated, relating to
131 grants of pardons, paroles, and other relief, is amended by revising subsections (b) and (c)
132 of Code Section 42-9-39, relating to restrictions on relief for persons serving a second life
133 sentence, as follows:

134 "(b) Except as otherwise provided in subsection (b) of Code Section 17-10-7 and Code
135 Section 42-9-62, when a person is convicted of murder and sentenced to life imprisonment
136 and such person has previously been incarcerated under a life sentence, such person shall
137 serve at least 30 years in the penitentiary before being granted a pardon and before
138 becoming eligible for parole.

139 (c) ~~When~~ Except as provided in Code Section 42-9-62, when a person receives consecutive
140 life sentences as the result of offenses occurring in the same series of acts and any one of
141 the life sentences is imposed for the crime of murder, such person shall serve consecutive
142 30 year periods for each such sentence, up to a maximum of 60 years, before being eligible
143 for parole consideration."

144 **SECTION 6.**

145 Said article is further amended by revising paragraph (2) of subsection (b) of Code Section
146 42-9-45, relating to the State Board of Pardons and Paroles rule-making power, as follows:

147 "(2) Except as otherwise provided in Code Sections 17-10-6.1, and 17-10-7, and 42-9-62
148 and paragraphs (3) and (4) of this subsection, an inmate serving a felony sentence or
149 felony sentences shall only be eligible for consideration for parole after the expiration of
150 nine months of his or her sentence or one-third of the time of the sentences, whichever
151 is greater. Except as otherwise provided in Code Sections 17-10-6.1 and 17-10-7 and
152 paragraphs (3) and (4) of this subsection, inmates serving sentences aggregating 21 years
153 or more shall become eligible for consideration for parole upon completion of the service
154 of seven years."

155 **SECTION 7.**

156 Said article is further amended by adding a new Code section to read as follows:

157 "42-9-62.

158 (a)(1) Notwithstanding Code Sections 42-9-39 and 42-9-45 and any other law to the
159 contrary, an inmate who was convicted of violating Code Section 16-5-1, if such crime
160 occurred when he or she was less than 18 years of age, shall be eligible for parole
161 consideration no later than after serving 25 years of incarceration, unless by law he or she
162 is eligible for earlier parole consideration.

163 (2) Notwithstanding Code Sections 42-9-39 and 42-9-45 and any other law to the
164 contrary, an inmate who was convicted of any other crime other than a violation of Code
165 Section 16-5-1, if such crime occurred when he or she was less than 18 years of age, shall
166 be eligible for parole consideration no later than after serving 15 years of incarceration,
167 unless by law he or she is eligible for earlier parole consideration.

168 (3) This Code section shall apply to any inmate whose crime was committed before, on,
169 or after July 1, 2018, regardless of the sentence imposed, including mandatory minimum

170 and consecutively served sentences, and regardless of the sentence the inmate is currently
171 servng, including imprisonment for life or imprisonment for life without parole.

172 (b)(1) The board shall expeditiously hold a hearing to consider the parole of an inmate
173 under this Code section. At such hearing, the board shall consider how a youthful
174 offender is different from an adult offender and shall provide the inmate with a
175 meaningful opportunity to be released on parole based on demonstrated maturity and
176 rehabilitation. The board shall comply with all other applicable laws, rules, and
177 regulations pertaining to such hearings.

178 (2) During a hearing under this Code section, in addition to other factors required by law
179 to be considered by the board, the board shall consider mitigating factors or
180 circumstances it deems relevant.

181 (3) An inmate eligible for parole consideration under this Code section may have an
182 attorney present to represent him or her at such hearing.

183 (4) If the board denies parole to an inmate under this Code section, the board shall
184 reconsider such inmate for parole at least every three years."

185 **SECTION 8.**

186 All laws and parts of laws in conflict with this Act are repealed.