

House Bill 802

By: Representatives Willard of the 51<sup>st</sup>, Rakestraw of the 19<sup>th</sup>, Trammell of the 132<sup>nd</sup>, and Oliver of the 82<sup>nd</sup>

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 style="text-align:center">**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:

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 sentences, 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.