

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 775

Short Title: Juveniles/Eliminate LWOP/Parole Eligibility. (Public)

Sponsors: Representatives Rogers, Hardister, Faircloth, and Morey (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary, if favorable, Rules, Calendar, and Operations of the House

April 16, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO ELIMINATE LIFE WITHOUT PAROLE FOR JUVENILES AND TO MODIFY
3 PAROLE ELIGIBILITY FOR JUVENILES SENTENCED TO MORE THAN FIFTEEN
4 YEARS IMPRISONMENT.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 15A-1340.13(d) reads as rewritten:

7 "(d) Service of Minimum Required; Earned Time Authorization. – An offender sentenced
8 to an active punishment shall serve the minimum term imposed, except as provided in
9 ~~G.S. 15A-1340.18.~~ G.S. 15A-1340.18 and Part 2A of this Article. The maximum term may be
10 reduced to, but not below, the minimum term by earned time credits awarded to an offender by
11 the Division of Adult Correction and Juvenile Justice of the Department of Public Safety or the
12 custodian of the local confinement facility, pursuant to rules adopted in accordance with law."

13 **SECTION 2.** Part 2A of Article 81B of Chapter 15A of the General Statutes reads
14 as rewritten:

15 "Part 2A. Sentencing and Parole Eligibility for Minors Subject to Life Imprisonment Without
16 Parole.~~Certain Minors.~~

17 ~~"§ 15A-1340.19A. Applicability.~~

18 ~~Notwithstanding the provisions of G.S. 14-17, a defendant who is convicted of first degree~~
19 ~~murder, and who was under the age of 18 at the time of the offense, shall be sentenced in~~
20 ~~accordance with this Part. For the purposes of this Part, "life imprisonment with parole" shall~~
21 ~~mean that the defendant shall serve a minimum of 25 years imprisonment prior to becoming~~
22 ~~eligible for parole.~~

23 **"§ 15A-1340.19B. Penalty and parole eligibility determination.**

24 (a) ~~In determining a sentence under this Part, the court shall do one of the following:~~

25 (1) ~~If the sole basis for conviction of a count or each count of first degree murder was the~~
26 ~~felony murder rule, then the court shall sentence the defendant to life imprisonment with parole.~~

27 (2) ~~If the court does not sentence the defendant pursuant to subdivision (1) of this~~
28 ~~subsection, then the court shall conduct a hearing to determine whether the defendant should be~~
29 ~~sentenced to life imprisonment without parole, as set forth in G.S. 14-17, or a lesser sentence of~~
30 ~~life imprisonment with parole.~~ Notwithstanding the provisions of G.S. 14-17, Part 2 of this
31 Article, and G.S. 15A-1371, a defendant who is convicted of first degree murder, and who was
32 under the age of 18 at the time of the offense, shall be sentenced to life imprisonment with parole
33 and shall be eligible for parole consideration after serving 25 years imprisonment.

34 (b) ~~The hearing under subdivision (2) of subsection (a) of this section shall be conducted~~
35 ~~by the trial judge as soon as practicable after the guilty verdict is returned. The State and the~~



1 ~~defendant shall not be required to resubmit evidence presented during the guilt determination~~
2 ~~phase of the case. Evidence, including evidence in rebuttal, may be presented as to any matter~~
3 ~~that the court deems relevant to sentencing, and any evidence which the court deems to have~~
4 ~~probative value may be received.~~ Notwithstanding the provisions of G.S. 15A-1371, a defendant
5 who was (i) convicted of a crime other than first degree murder, (ii) under the age of 18 at the
6 time of the offense, and (iii) sentenced to more than 15 years imprisonment shall be eligible for
7 parole consideration after serving 15 years imprisonment.

8 (e) ~~The defendant or the defendant's counsel may submit mitigating circumstances to the~~
9 ~~court, including, but not limited to, the following factors:~~

10 (1) ~~Age at the time of the offense.~~

11 (2) ~~Immaturity.~~

12 (3) ~~Ability to appreciate the risks and consequences of the conduct.~~

13 (4) ~~Intellectual capacity.~~

14 (5) ~~Prior record.~~

15 (6) ~~Mental health.~~

16 (7) ~~Familial or peer pressure exerted upon the defendant.~~

17 (8) ~~Likelihood that the defendant would benefit from rehabilitation in~~
18 ~~confinement.~~

19 (9) ~~Any other mitigating factor or circumstance.~~

20 (d) ~~The State and the defendant or the defendant's counsel shall be permitted to present~~
21 ~~argument for or against the sentence of life imprisonment with parole. The defendant or the~~
22 ~~defendant's counsel shall have the right to the last argument.~~

23 (e) ~~The provisions of Article 58 of Chapter 15A of the General Statutes apply to~~
24 ~~proceedings under this Part.~~

25 **~~§ 15A-1340.19C. Sentencing; assignment for resentencing.~~**

26 (a) ~~The court shall consider any mitigating factors in determining whether, based upon~~
27 ~~all the circumstances of the offense and the particular circumstances of the defendant, the~~
28 ~~defendant should be sentenced to life imprisonment with parole instead of life imprisonment~~
29 ~~without parole. The order adjudging the sentence shall include findings on the absence or~~
30 ~~presence of any mitigating factors and such other findings as the court deems appropriate to~~
31 ~~include in the order.~~

32 (b) ~~All motions for appropriate relief filed in superior court seeking resentencing under~~
33 ~~the provisions of this Part may be heard and determined in the trial division by any judge (i) who~~
34 ~~is empowered to act in criminal matters in the superior court district or set of districts as defined~~
35 ~~in G.S. 7A-41.1, in which the judgment was entered and (ii) who is assigned pursuant to this~~
36 ~~section to review the motion for appropriate relief and take the appropriate administrative action~~
37 ~~to dispense with the motion.~~

38 (c) ~~The judge who presided at the trial of the defendant is empowered to act upon the~~
39 ~~motion for appropriate relief even though the judge is in another district or even though the~~
40 ~~judge's commission has expired; however, if the judge who presided at the trial is still unavailable~~
41 ~~to act, the senior resident superior court judge shall assign a judge who is empowered to act under~~
42 ~~subsection (b) of this section.~~

43 (d) ~~All motions for appropriate relief filed in superior court seeking resentencing under~~
44 ~~the provisions of this Part shall, when filed, be referred to the senior resident superior court judge,~~
45 ~~who shall assign the motion as provided by this section for review and administrative action,~~
46 ~~including, as may be appropriate, dismissal, calendaring for hearing, entry of a scheduling order~~
47 ~~for subsequent events in the case, or other appropriate actions.~~

48 **~~§ 15A-1340.19D. Incidents of parole.~~**

49 (a) ~~Except as otherwise provided in this section, a defendant sentenced to life~~
50 ~~imprisonment with parole eligible for parole consideration under this Part shall be subject to the~~

1 conditions and procedures set forth in Article 85 of Chapter 15A of the General Statutes,
2 including the notification requirement in G.S. 15A-1371(b)(3).

3 (b) The term of parole for a person released from imprisonment ~~from a sentence of life~~
4 ~~imprisonment with parole~~ based on parole consideration pursuant to this Part shall be five years
5 and may not be terminated earlier by the Post-Release Supervision and Parole Commission.

6 (c) A defendant ~~sentenced to life imprisonment with parole~~ who is ~~paroled, and paroled~~
7 pursuant to this Part, and who then violates a condition of parole and is returned to prison to serve
8 the ~~life-remainder of his or her~~ sentence, shall not be eligible for parole for five years from the
9 date of the return to confinement.

10 (d) Life imprisonment with parole under this Part means that unless the defendant
11 receives parole, the defendant shall remain imprisoned for the defendant's natural life."

12 **SECTION 3.** G.S. 15A-1371(a) reads as rewritten:

13 **"§ 15A-1371. Parole eligibility, consideration, and refusal.**

14 (a) Eligibility. – Unless his sentence includes a minimum sentence, a prisoner serving a
15 term of imprisonment for a conviction of impaired driving under G.S. 20-138.1 other than one
16 included in a sentence of special probation imposed under authority of this Subchapter is eligible
17 for release on parole at any time. A prisoner whose sentence includes a minimum term of
18 imprisonment imposed under authority of this Subchapter is eligible for release on parole only
19 upon completion of the service of that minimum term or one fifth of the maximum penalty
20 allowed by law for the offense for which the prisoner is sentenced, whichever is less, less any
21 credit allowed under G.S. 15A-1355(c) and Article 19A of Chapter 15 of the General Statutes. A
22 prisoner sentenced under the Fair Sentencing Act for a Class D through Class J felony, who meets
23 the criteria established pursuant to this section, is eligible for parole consideration after
24 completion of the service of at least 20 years imprisonment less any credit allowed under
25 applicable State law. A prisoner who is sentenced under the Fair Sentencing Act, and who was
26 under the age of 18 at the time of the offense, shall be eligible for parole consideration after
27 completion of 20 years imprisonment."

28 **SECTION 4.** This act becomes effective December 1, 2019, and applies to offenses
29 committed on or after that date.