

House Bill 894

By: Representatives Holcomb of the 101<sup>st</sup> and Blackmon of the 146<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated,  
2 relating to procedure for sentencing and imposition of punishment, so as to authorize the  
3 sentencing court to review and resentence certain cases where the punishment of life without  
4 parole was imposed; to provide for a petition; to provide for a hearing; to provide for the  
5 right to counsel; to provide for notice to the victim; to provide for an appeal process; to  
6 provide for limitations; to provide for related matters; to provide for a short title; to repeal  
7 conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 This Act shall be known and may be cited as the "Georgia Second Look Act."

11 **SECTION 2.**

12 Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to  
13 procedure for sentencing and imposition of punishment, is amended by revising  
14 subparagraph (a)(1)(A) of Code Section 17-10-1, relating to fixing of sentence, suspension

H. B. 894

- 1 -



41 have elapsed after the date such petition was denied; the court may require a longer  
42 waiting period, but no more than five years after the date the petition was denied; and  
43 (B) A petition for a reduction in sentence under this Code section has been granted.  
44 The incarcerated individual may not file a petition for a second sentencing reduction  
45 until at least five years have elapsed after the date the petition was granted.

46 (2) Notwithstanding this subsection, an otherwise ineligible incarcerated individual shall  
47 be deemed eligible to petition for a reduction in sentence upon consent of the prosecuting  
48 attorney.

49 (b) No more than 30 days after the date on which the twentieth year of imprisonment  
50 begins for an incarcerated individual sentenced to life without parole, the Department of  
51 Corrections shall provide written notice of the provisions of this Code section to the  
52 incarcerated individual and the sentencing court, the prosecuting attorney, and the  
53 incarcerated individual's attorney of record or the Georgia Public Defender Council.

54 (c)(1) A petition for a sentence reduction under this Code section may be filed six  
55 months after the date on which the twentieth year of imprisonment begins for an  
56 incarcerated individual sentenced to life without parole, and such petition shall be filed  
57 in writing in the judicial district in which the sentence was imposed and may include  
58 affidavits, declarations, letters, prison records, or other written and electronic material.

59 (2) Upon the court's receipt of a petition under this Code section, the court shall promptly  
60 notify the appropriate prosecuting attorney and provide such prosecuting attorney with  
61 a copy of the petition, including any attached written or electronic material.

62 (d)(1) A petition submitted pursuant to subsection (c) of this Code section shall be  
63 referred for determination to the judge or justice who imposed the original sentence upon  
64 such individual. If, at the time of the application for petition, the original sentencing  
65 judge is no longer available, then the petition shall be assigned to another judge of the  
66 original sentencing court.

67 (2) After the filing of a petition for a sentencing reduction under this Code section, the  
68 court may direct the parties to expand the record by submitting additional materials  
69 relating to the motion. A petition filed under this Code section may be amended with  
70 leave of court, which the court should grant in the interest of justice.

71 (e) No waiver of the right to petition for a resentencing under this Code section shall be  
72 permitted or honored by the sentencing court.

73 (f)(1) The court shall, upon request of the defendant or the state, conduct a hearing on  
74 the motion, at which the defendant and counsel for the defendant shall be given the  
75 opportunity to be heard. Such hearing shall be recorded or transcribed.

76 (2) In a hearing under this subsection, the court, in its discretion, may allow parties to  
77 present any evidence that the court deems relevant to the issue of the propriety of a  
78 reduction in sentencing. Such evidence may include documents, live testimony, tangible  
79 objects, or any other class of evidence or information pertinent to sentencing. The court  
80 has exclusive discretion to determine the relevance of any proposed evidence. At such  
81 hearing, the defendant shall have the right to testify or to remain silent at the defendant's  
82 sole discretion.

83 (3) In a hearing under this subsection, the defendant shall be present unless he or she  
84 waives the right to be present. The requirement under this paragraph may be satisfied by  
85 the defendant appearing by video teleconference.

86 (4) The court shall set forth, either in open court or in writing, the reasons for granting  
87 or denying a petition under this Code section.

88 (g) In exercising its discretion under this Code section, the court must consider the  
89 following factors:

90 (1) The age of the defendant at the time of the offense and relevant research regarding  
91 development of the brain;

92 (2) The age of the defendant at the time of the sentence modification petition and  
93 relevant research regarding the decline in criminal behavior as individuals grow older;

- 94 (3) The age of the defendant and the likely impact of this factor to mitigate a potential  
95 risk to public safety;
- 96 (4) The health of the defendant and the likely impact of this factor to mitigate a potential  
97 risk to public safety;
- 98 (5) The nature of the offense, including any changing societal attitudes regarding the  
99 propriety of criminalizing the offense and the appropriate sentence for the offense;
- 100 (6) The history and characteristics of the defendant at the time of the petition for a  
101 reduction in sentence, including rehabilitation demonstrated by the defendant, the  
102 defendant's disciplinary record while incarcerated, and the defendant's efforts to  
103 participate in educational, therapeutic, and vocational opportunities while imprisoned;
- 104 (7) The circumstances of the offense, including the defendant's role in its commission,  
105 whether the defendant was under the influence of another, or whether the defendant was  
106 the victim of domestic or sexual abuse at the time of the offense and whether such abuse  
107 was related to the defendant's commission of the offense;
- 108 (8) Any report of a physical, mental, or psychiatric examination of the defendant  
109 conducted by a licensed health care professional;
- 110 (9) Any statement by any victim of an offense for which the defendant is imprisoned or  
111 by a family member of the victim if the victim is deceased;
- 112 (10) Any evidence concerning whether the defendant's sentence was enhanced because  
113 the defendant exercised his or her constitutional right to a trial;
- 114 (11) Any evidence that the defendant was denied effective assistance of counsel at any  
115 stage in the case leading to the original sentence, including ineffective assistance of  
116 counsel at the plea-bargaining stage;
- 117 (12) Any evidence that the defendant is innocent of the offense for which he or she was  
118 incarcerated; or
- 119 (13) Any other information the court determines relevant to the decision of the court.

120 (h) In the case of a defendant who is 55 years of age or older on the date on which the  
121 defendant files a petition for a sentence reduction under this Code section, there shall be  
122 a rebuttable presumption that the defendant shall be released.

123 (i) In calculating the new term to be served by the defendant, such defendant shall be  
124 credited for any jail time credited toward the subject conviction as well as any period of  
125 incarceration credited toward the sentence originally imposed.

126 (j)(1) A defendant who is unable to afford counsel is entitled to have counsel appointed,  
127 at no cost to the defendant, to represent the defendant for the petition and proceedings  
128 under this Code section, including any appeal, unless the defendant expressly waives the  
129 right to counsel after being fully advised of such right by the court.

130 (2) A defendant who files a pro se petition and subsequently retains or is appointed  
131 counsel shall be entitled to amend such petition at least once as of right with the  
132 assistance of counsel. Subsequent amendments may be permitted by leave of court, as  
133 authorized by subsection (c) of this Code section.

134 (k)(1) Upon receipt of a petition for resentencing, a prosecuting attorney shall provide  
135 any notification to the victim otherwise required by statute and shall, if practicable,  
136 consult with the victim prior to making any filing in relation to a petition under this Code  
137 section or consenting to the petition of an otherwise-ineligible defendant.

138 (2) The victim shall not be excluded from a hearing granted under subsection (f) of this  
139 Code section and may be allowed to provide a statement, oral or written, regarding the  
140 impact of the offense on the victim.

141 (3) The court shall not, in modifying a sentence, disturb any restitution awarded at the  
142 original sentencing.

143 (l) An appeal from a resentencing proceeding under this Code section may be submitted  
144 by the defendant or the prosecuting authority on the grounds that the resentence is  
145 unlawful, was imposed in an unlawful manner, is too lenient, or is otherwise inappropriate  
146 in light of the purposes of sentencing as enunciated in this state's statutes. The right to

147 appeal from a sentence modification under this subsection shall be as of right on the same  
148 terms as a first appeal from an initial sentence at the time of conviction."

149 **SECTION 4.**

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