

Senate Bill 149

By: Senators Kemp of the 3rd, Meyer von Bremen of the 12th, Harp of the 16th, Adelman of the 42nd, Hamrick of the 30th and Reed of the 35th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to
2 sentencing and punishment in criminal cases, so as to provide for the imposition of a
3 sentence of life without parole in certain cases under certain circumstances; to provide for
4 related matters; to provide for applicability; to provide an effective date; to repeal conflicting
5 laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to sentencing and
9 punishment in criminal cases, is amended by striking in its entirety Code Section 17-10-2,
10 relating to conducting presentence hearings in felony cases and the effect of reversal for error
11 in presentence hearings, and inserting in lieu thereof the following:

12 "17-10-2.

13 (a) Except in cases in which the death penalty or life without parole may be imposed, upon
14 the return of a verdict of 'guilty' by the jury in any felony case, the judge shall dismiss the
15 jury and shall conduct a presentence hearing at which the only issue shall be the
16 determination of punishment to be imposed. In the hearing the judge shall hear additional
17 evidence in extenuation, mitigation, and aggravation of punishment, including the record
18 of any prior criminal convictions and pleas of guilty or nolo contendere of the defendant,
19 or the absence of any prior conviction and pleas, provided that only such evidence in
20 aggravation as the state has made known to the defendant prior to the defendant's trial shall
21 be admissible. The judge shall also hear argument by the defendant or the defendant's
22 counsel and the district attorney, as provided by law, regarding the punishment to be
23 imposed. The ~~district~~ prosecuting attorney shall open and the defendant or the defendant's
24 counsel shall conclude the argument. Upon the conclusion of the evidence and arguments,
25 the judge shall impose the sentence or shall recess the trial for the purpose of taking the

1 sentence to be imposed under advisement. The judge shall fix a sentence within the limits
2 prescribed by law.

3 (b) In cases in which the death penalty or life without parole may be imposed, the judge,
4 when sitting without a jury, in addition to the procedure set forth in subsection (a) of this
5 Code section, shall follow the procedures provided for in Code Sections 17-10-30, and
6 17-10-30.1, and 17-10-30.2.

7 (c) In all cases tried by a jury in which the death penalty or life without parole may be
8 imposed, upon a return of a verdict of 'guilty' by the jury, the court shall resume the trial
9 and conduct a presentence hearing before the jury. The hearing shall be conducted in the
10 same manner as presentence hearings conducted before the judge as provided for in
11 subsection (a) of this Code section. Upon the conclusion of the evidence and arguments,
12 the judge shall give the jury appropriate instructions, and the jury shall retire to determine
13 whether any mitigating or aggravating circumstances, as defined in Code Section 17-10-30
14 or 17-10-30.2, exist and whether to recommend mercy for the defendant. Upon the findings
15 of the jury, the judge shall fix a sentence within the limits prescribed by law. (d) If the
16 trial court is reversed on appeal because of error only in the presentence hearing, the new
17 trial which may be ordered shall apply only to the issue of punishment."

18 SECTION 2.

19 Said chapter is further amended by striking in its entirety Code Section 17-10-30.1, relating
20 to imprisonment for life without parole, findings of statutory aggravating circumstances
21 required, and the duties of the judge and jury, and inserting in lieu thereof the following:

22 "17-10-30.1.

23 (a) Imprisonment for life without parole can be imposed in any murder case in which there
24 is found by the court or jury one or more statutory aggravating circumstances as defined
25 by Code Section 17-10-30 or 17-10-30.2.

26 (b) In all cases for which life without parole may be authorized, the judge shall consider,
27 or shall include in the judge's instructions to the jury for it to consider, any mitigating
28 circumstances or any of the statutory aggravating circumstances specified by Code Section
29 17-10-30 or 17-10-30.2 which may be supported by the evidence.

30 (c) The statutory instructions as determined by the trial judge to be warranted by the
31 evidence shall be given in charge and in writing to the jury for its deliberation. The jury,
32 if its verdict is a recommendation of life without parole, shall designate in writing, signed
33 by the foreman of the jury, the statutory aggravating circumstance or circumstances which
34 it found beyond a reasonable doubt. In nonjury cases the judge shall make such
35 designation. Unless at least one of the statutory aggravating circumstances enumerated in
36 Code Section 17-10-30 or 17-10-30.2 is so found, life without parole shall not be imposed."

SECTION 3.

Said chapter is further amended by adding following Code Section 17-10-30.1, relating to imprisonment for life without parole, findings of statutory aggravating circumstances required, and the duties of the judge and jury, a new Code Section 17-10-30.2 to read as follows:

"17-10-30.2.

(a) Imprisonment for life without parole may be imposed for the offense of aircraft hijacking or treason in any case.

(b) In all cases of other offenses for which imprisonment for life without parole may be authorized, the judge shall consider, or he or she shall include in his or her instructions to the jury for it to consider, any mitigating circumstances or aggravating circumstances otherwise authorized by law and any of the following statutory aggravating circumstances which may be supported by the evidence:

(1) The offense of murder, rape, armed robbery, or kidnapping was committed by a person with a prior record of conviction for a capital felony;

(2) The offense of murder, rape, armed robbery, or kidnapping was committed while the offender was engaged in the commission of another capital felony or aggravated battery, or the offense of murder was committed while the offender was engaged in the commission of burglary or arson in the first degree;

(3) The offender, by his or her act of murder, armed robbery, or kidnapping, knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which would normally be hazardous to the lives of more than one person;

(4) The offender committed the offense of murder for himself, herself, or another, for the purpose of receiving money or any other thing of monetary value;

(5) The murder of a judicial officer, former judicial officer, prosecuting attorney or solicitor-general, or former prosecuting attorney, solicitor, or solicitor-general was committed during or because of the exercise of his or her official duties;

(6) The offender caused or directed another to commit murder or committed murder as an agent or employee of another person;

(7) The offense of murder, rape, armed robbery, or kidnapping was outrageously or wantonly vile, horrible, or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim;

(8) The offense of murder was committed against any peace officer, corrections employee, or firefighter while engaged in the performance of his or her official duties;

(9) The offense of murder was committed by a person in, or who has escaped from, the lawful custody of a peace officer or place of lawful confinement; or

1 (10) The murder was committed for the purpose of avoiding, interfering with, or
2 preventing a lawful arrest or custody in a place of lawful confinement, of himself, herself,
3 or another.

4 (c) The statutory instructions as determined by the trial judge to be warranted by the
5 evidence shall be given in charge and in writing to the jury for its deliberation. The jury,
6 if its verdict is a recommendation of imprisonment for life without parole, shall designate
7 in writing, signed by the foreman of the jury, the aggravating circumstance or
8 circumstances which it found beyond a reasonable doubt. In nonjury cases the judge shall
9 make such designation. Except in cases of treason or aircraft hijacking, unless at least one
10 of the statutory aggravating circumstances enumerated in subsection (b) of this Code
11 section is so found, imprisonment for life without parole shall not be imposed."

12 **SECTION 4.**

13 Except as provided in this section, the provisions of this Act shall apply only to those
14 offenses committed after the effective date of this Act. With express written consent of the
15 state, a defendant whose offense was committed prior to the effective date of this Act may
16 elect in writing to be sentenced under the provisions of this Act, provided that: (1) jeopardy
17 for the offense charged has not attached or (2) the defendant has been sentenced to death but
18 the conviction or sentence has been reversed on appeal and the state is not barred from
19 seeking prosecution after the remand.

20 **SECTION 5.**

21 This Act shall become effective on the first day of the month following its approval by the
22 Governor or its becoming law without the approval of the Governor.

23 **SECTION 6.**

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