

Senate Bill 175

By: Senator Hamrick of the 30th

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure,
2 so as to clarify the provisions relating to oral scientific reports; to provide for discovery with
3 regard to sentencing hearings; to provide for related matters; to repeal conflicting laws; and
4 for other purposes.

5 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

6 **SECTION 1.**

7 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
8 amended by striking subsection (a) of Code Section 17-10-2, relating to conduct of
9 presentence hearings in felony cases, and inserting in lieu thereof a new subsection (a) to
10 read as follows:

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

SECTION 2.

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2 Said title is further amended by striking paragraph (4) of subsection (a) of Code Section
3 17-16-4, relating to disclosures required of prosecuting attorney and defendant, and inserting
4 in lieu thereof a new paragraph (4) to read as follows:

5 "(4) The prosecuting attorney shall, no later than ten days prior to trial, or as otherwise
6 ordered by the court, permit the defendant at a time agreed to by the parties or ordered
7 by the court to inspect and copy or photograph a report of any physical or mental
8 examinations and of scientific tests or experiments, including a summary of the basis for
9 the expert opinion rendered in the report, or copies thereof, if the state intends to
10 introduce in evidence in its case-in-chief or in rebuttal the results of the physical or
11 mental examination or scientific test or experiment. If the report is oral or partially oral,
12 the prosecuting attorney shall furnish in writing all relevant and material portions of such
13 report by serving opposing counsel with such portions no later than ten days prior to trial.
14 Nothing in this Code section shall require the disclosure of any other material, note, or
15 memorandum relating to the psychiatric or psychological treatment or therapy of any
16 victim or witness."

SECTION 3.

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18 Said title is further amended by striking paragraph (2) of subsection (b) of Code Section
19 17-16-4, relating to disclosures required of prosecuting attorney and defendant, and inserting
20 in lieu thereof a new paragraph (2) to read as follows:

21 "(2) The defendant shall within ten days of timely compliance by the prosecuting
22 attorney but no later than five days prior to trial, or as otherwise ordered by the court,
23 permit the prosecuting attorney at a time agreed to by the parties or as ordered by the
24 court to inspect and copy or photograph a report of any physical or mental examinations
25 and of scientific tests or experiments, including a summary of the basis for the expert
26 opinion rendered in the report, or copies thereof, if the defendant intends to introduce in
27 evidence in the defense's case-in-chief or rebuttal the results of the physical or mental
28 examination or scientific test or experiment. If the report is oral or partially oral, the
29 defendant shall furnish in writing all relevant and material portions of such report by
30 serving opposing counsel with such portions no later than ten days prior to trial. Nothing
31 in this Code section shall require the disclosure of any other material, note, or
32 memorandum relating to the psychiatric or psychological treatment or therapy of any
33 defendant or witness."
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SECTION 4.

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