

House Bill 13

By: Representatives Bearden of the 68th and Franklin of the 43rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 16-6-2 of the Official Code of Georgia Annotated, relating to
2 sodomy and aggravated sodomy, so as to change the age limitation as it relates to the offense
3 of aggravated sodomy; to change certain provisions relating to punishment for aggravated
4 sodomy; to amend Article 2 of Chapter 10 of Title 17 of the Official Code of Georgia
5 Annotated, relating to the death penalty generally, so as to provide for the imposition of the
6 death penalty for the offense of aggravated sodomy when the victim is less than 12 years of
7 age; to change certain provisions relating to the procedure for imposition of the death
8 penalty; to change certain provisions relating to the requirement of the jury finding
9 aggravating circumstances and recommending the death penalty prior to its imposition; to
10 change certain provisions relating to sentencing a person indicted for a capital offense to life
11 imprisonment or other punishment upon a plea of guilty; to change certain provisions relating
12 to review of death sentences by the Supreme Court of Georgia; to provide for related matters;
13 to repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 style="text-align:center">**SECTION 1.**

16 Code Section 16-6-2 of the Official Code of Georgia Annotated, relating to sodomy and
17 aggravated sodomy, is amended by striking the Code section and inserting in lieu thereof the
18 following:

19 "16-6-2.

20 (a) A person commits the offense of sodomy when he or she performs or submits to any
21 sexual act involving the sex organs of one person and the mouth or anus of another. A
22 person commits the offense of aggravated sodomy when he or she commits sodomy with
23 force and against the will of the other person or when he or she commits sodomy with a
24 person who is less than ~~ten~~ 12 years of age. The fact that the person allegedly sodomized
25 is the spouse of a defendant shall not be a defense to a charge of aggravated sodomy.

1 (b) A person convicted of the offense of sodomy shall be punished by imprisonment for
 2 not less than one nor more than 20 years. A person convicted of the offense of aggravated
 3 sodomy when the victim is less than 12 years of age shall be punished by death, by
 4 imprisonment for life, or by imprisonment for not less than ten nor more than 30 years; a
 5 person otherwise convicted of the offense of aggravated sodomy shall be punished by
 6 imprisonment for life or by imprisonment for not less than ten nor more than 30 years. Any
 7 person convicted under this Code section of the offense of aggravated sodomy shall, in
 8 addition, be subject to the sentencing and punishment provisions of Code Sections
 9 17-10-6.1 and 17-10-7.

10 (c) When evidence relating to an allegation of aggravated sodomy is collected in the
 11 course of a medical examination of the person who is the victim of the alleged crime, the
 12 law enforcement agency investigating the alleged crime shall be financially responsible for
 13 the cost of the medical examination to the extent that expense is incurred for the limited
 14 purpose of collecting evidence."

15 SECTION 2.

16 Article 2 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to the
 17 death penalty generally, is amended by striking subsections (a) and (c) of Code Section
 18 17-10-30, relating to the procedure for imposition of the death penalty generally, and
 19 inserting in lieu thereof the following:

20 "(a) The death penalty may be imposed for the offenses of aircraft hijacking or treason in
 21 any case or for the offense of aggravated sodomy when the victim is less than 12 years of
 22 age."

23 "(c) The statutory instructions as determined by the trial judge to be warranted by the
 24 evidence shall be given in charge and in writing to the jury for its deliberation. The jury,
 25 if its verdict is a recommendation of death, shall designate in writing, signed by the
 26 foreman of the jury, the aggravating circumstance or circumstances which it found beyond
 27 a reasonable doubt. In nonjury cases the judge shall make such designation. Except in cases
 28 of treason, ~~or aircraft hijacking,~~ or aggravated sodomy when the victim is less than 12 years
 29 of age, unless at least one of the statutory aggravating circumstances enumerated in
 30 subsection (b) of this Code section is so found, the death penalty shall not be imposed."

31 SECTION 3.

32 Said article is further amended by striking Code Section 17-10-31, relating to the requirement
 33 of the jury finding aggravating circumstances and recommending the death penalty prior to
 34 its imposition, and inserting in lieu thereof the following:

1 "17-10-31.
 2 Where, upon a trial by jury, a person is convicted of an offense which may be punishable
 3 by death, a sentence of death shall not be imposed unless the jury verdict includes a finding
 4 of at least one statutory aggravating circumstance and a recommendation that such sentence
 5 be imposed. Where a statutory aggravating circumstance is found and a recommendation
 6 of death is made, the court shall sentence the defendant to death. Where a sentence of death
 7 is not recommended by the jury, the court shall sentence the defendant to imprisonment as
 8 provided by law. Unless the jury trying the case makes a finding of at least one statutory
 9 aggravating circumstance and recommends the death sentence in its verdict, the court shall
 10 not sentence the defendant to death, provided that no such finding of statutory aggravating
 11 circumstance shall be necessary in offenses of treason, or aircraft hijacking, or aggravated
 12 sodomy when the victim is less than 12 years of age. This Code section shall not affect a
 13 sentence when the case is tried without a jury or when the judge accepts a plea of guilty."

14 **SECTION 4.**

15 Said article is further amended by striking Code Section 17-10-32, relating to sentencing a
 16 person indicted for a capital offense to life imprisonment or other punishment upon a plea
 17 of guilty, and inserting in lieu thereof the following:

18 "17-10-32.

19 Any person who has been indicted for an offense punishable by death may enter a plea of
 20 guilty at any time after his or her indictment, and the judge of the superior court having
 21 jurisdiction may, in his or her discretion, sentence the person to life imprisonment or to any
 22 other punishment authorized by law for the offense named in the indictment; provided,
 23 however, that the judge must find one of the statutory aggravating circumstances provided
 24 in Code Section 17-10-30 before imposing the death penalty, except in cases of treason, or
 25 aircraft hijacking, or aggravated sodomy when the victim is less than 12 years of age."

26 **SECTION 5.**

27 Said article is further amended by striking subsection (c) of Code Section 17-10-35, relating
 28 to review of death sentences by the Supreme Court of Georgia, and inserting in lieu thereof
 29 the following:

30 "(c) With regard to the sentence, the court shall determine:

- 31 (1) Whether the sentence of death was imposed under the influence of passion, prejudice,
 32 or any other arbitrary factor;
 33 (2) Whether, in cases other than treason, or aircraft hijacking, or aggravated sodomy
 34 when the victim is less than 12 years of age, the evidence supports the jury's or judge's

1 finding of a statutory aggravating circumstance as enumerated in subsection (b) of Code
2 Section 17-10-30; and
3 (3) Whether the sentence of death is excessive or disproportionate to the penalty imposed
4 in similar cases, considering both the crime and the defendant."

5 **SECTION 6.**

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