

House Bill 185

By: Representatives Fleming of the 117th, Talton of the 145th, Everson of the 106th, Bearden of the 68th, Keen of the 179th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated,
2 relating to the death penalty generally, so as to provide that the death penalty may be
3 imposed where the jury finds at least one aggravating circumstance but is unable to reach a
4 unanimous verdict as to the sentence, taking into account the majority vote of the jurors in
5 some circumstances and nine jurors in other circumstances; to change provisions relating to
6 the requirement of a jury finding of aggravating circumstance and recommending the death
7 penalty; to provide for an effective date and applicability; to repeal conflicting laws; and for
8 other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

11 Article 2 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to the
12 death penalty generally, is amended by revising Code Section 17-10-31, relating to
13 requirement of a jury finding of aggravating circumstance and recommendation of death
14 penalty, as follows:

15 "17-10-31.

16 Except as provided in this Code section or Code Section 17-10-31.1, where ~~Where~~, upon
17 a trial by jury, a person is convicted of an offense which may be punishable by death, a
18 sentence of death shall not be imposed unless the jury verdict includes a finding of at least
19 one statutory aggravating circumstance and a recommendation that such sentence be
20 imposed. Where a statutory aggravating circumstance is found and a recommendation of
21 death is made, the court shall sentence the defendant to death. Where a sentence of death
22 is not recommended by the jury, the court shall sentence the defendant ~~to imprisonment~~ as
23 provided ~~by law~~ in Code Section 17-10-31.1. Unless the jury trying the case makes a
24 finding of at least one statutory aggravating circumstance ~~and recommends the death~~
25 ~~sentence~~ in its verdict, the court shall not sentence the defendant to death, provided that no
26 such finding of statutory aggravating circumstance shall be necessary in offenses of treason

1 or aircraft hijacking. This Code section shall not affect a sentence when the case is tried
 2 without a jury or when the judge accepts a plea of guilty."

3 **SECTION 2.**

4 Said article is further amended by revising Code Section 17-10-31.1, relating to requirement
 5 of a jury finding aggravating circumstances and recommendation of sentence of death or life
 6 without parole, as follows:

7 "17-10-31.1.

8 (a) Where, upon a trial by jury, a person is convicted of murder, a sentence of death or life
 9 without parole shall not be imposed unless the jury verdict includes a finding of at least one
 10 statutory aggravating circumstance ~~and a recommendation that such sentence be imposed.~~

11 (b) Where a statutory aggravating circumstance is found and a recommendation of life
 12 without parole is made, the ~~court~~ judge shall sentence the defendant to imprisonment for
 13 life without parole as provided in Code Section 17-10-16.

14 (c) Where a statutory aggravating circumstance is found and the jury has been impaneled
 15 to determine the sentence ~~and the jury has unanimously found the existence of at least one~~
 16 ~~statutory aggravating circumstance but is unable to reach a unanimous verdict as to~~
 17 sentence, the judge shall dismiss the jury and shall impose a sentence of ~~either~~ life
 18 imprisonment, ~~or~~ imprisonment for life without parole, or death.

19 (d) In imposing sentence, if the jury finds beyond a reasonable doubt that the defendant
 20 committed at least one statutory aggravating circumstance, the judge may sentence the
 21 defendant to:

22 (1) Imprisonment ~~imprisonment~~ for life without parole ~~only if the court finds beyond a~~
 23 ~~reasonable doubt that the defendant committed at least one statutory aggravating~~
 24 ~~circumstance and the trial court~~ if the judge has been informed by the jury foreman
 25 foreperson that upon their last vote, a majority of the jurors cast their vote for a sentence
 26 of death or for a sentence of life imprisonment without parole; or

27 (2) Death if the judge has been informed by the jury foreperson that upon their last vote,
 28 at least nine of the jurors cast their vote for a sentence of death;

29 provided, however, that the ~~trial~~ judge may impose a sentence of life imprisonment or
 30 imprisonment for life without parole as provided by law.

31 ~~(d)~~(e) Notwithstanding any other provision of law, during the sentencing phase before a
 32 jury, counsel for the state and the accused may present argument and the ~~trial~~ judge may
 33 instruct the jury:

34 (1) That 'life without parole' means that the defendant shall be incarcerated for the
 35 remainder of his or her natural life and shall not be eligible for parole unless such person

1 is subsequently adjudicated to be innocent of the offense for which he or she was
2 sentenced; and

3 (2) That 'life imprisonment' means that the defendant will be incarcerated for the
4 remainder of his or her natural life but will be eligible for parole during the term of such
5 sentence."

6 **SECTION 3.**

7 This Act shall become effective on July 1, 2007, and shall apply to all trials which occur on
8 or after July 1, 2007.

9 **SECTION 4.**

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