

Senate Bill 145

By: Senators Smith of the 52nd, Johnson of the 1st, Williams of the 19th, Seabaugh of the 28th, Moody of the 56th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 16-5-1 and Chapter 10 of Title 17 of the Official Code of Georgia
2 Annotated, relating to murder and felony murder and sentencing and punishment,
3 respectively, so as to provide for the imposition of life without parole of persons convicted
4 of murder independently of a death penalty prosecution; to provide that the sentence of life
5 without parole may be imposed without the necessity of the trier of fact making a
6 recommendation of such sentence or finding statutory aggravating circumstances; to change
7 certain provisions relating to punishment for serious violent offenders; to repeal certain
8 provisions relating to imprisonment for life without parole and finding statutory aggravating
9 circumstance; to provide for certain information to be reported to the court under certain
10 circumstances; to repeal provisions relating to duties of the judge and certain jury
11 instructions; to repeal provisions relating to sentencing of person subject to death penalty or
12 life without parole upon a plea of guilty and the duties of the judge; to provide for related
13 matters; to provide an effective date; to provide for applicability; to repeal conflicting laws;
14 and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 **SECTION 1.**

17 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
18 amended by revising subsection (d) of Code Section 16-5-1, relating to murder, as follows:
19 "(d) A person convicted of the offense of murder shall be punished by death, by
20 imprisonment for life without parole, or by imprisonment for life."

21 **SECTION 2.**

22 Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to sentencing and
23 punishment in criminal cases, is amended by revising Code Section 17-10-2, relating to
24 conducting presentence hearings in felony cases and the effect of reversal for error in
25 presentence hearings, as follows:

1 "17-10-2.

2 (a)(1) Except in cases in which the death penalty ~~or life without parole~~ may be imposed,
3 upon the return of a verdict of 'guilty' by the jury in any felony case, the judge shall
4 dismiss the jury and shall conduct a presentence hearing at which the only issue shall be
5 the determination of punishment to be imposed. In the hearing the judge shall hear
6 additional evidence in extenuation, mitigation, and aggravation of punishment, including
7 the record of any prior criminal convictions and pleas of guilty or nolo contendere of the
8 defendant, or the absence of any prior conviction and pleas.

9 (2) The judge shall also hear argument by the defendant or the defendant's counsel and
10 the prosecuting attorney, as provided by law, regarding the punishment to be imposed.
11 Except in cases where the death penalty may be imposed, the prosecuting attorney shall
12 open and conclude the argument. In cases where the death penalty may be imposed, the
13 prosecuting attorney shall open and the defendant or the defendant's counsel shall
14 conclude the argument.

15 (3) Upon the conclusion of the evidence and arguments, the judge shall impose the
16 sentence or shall recess the trial for the purpose of taking the sentence to be imposed
17 under advisement. The judge shall fix a sentence within the limits prescribed by law.

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

22 (c) In all cases tried by a jury in which the death penalty ~~or life without parole~~ may be
23 imposed, upon a return of a verdict of 'guilty' by the jury, the court shall resume the trial
24 and conduct a presentence hearing before the jury. The hearing shall be conducted in the
25 same manner as presentence hearings conducted before the judge as provided for in
26 subsection (a) of this Code section. Upon the conclusion of the evidence and arguments,
27 the judge shall give the jury appropriate instructions, and the jury shall retire to determine
28 whether any mitigating or aggravating circumstances, as defined in Code Section 17-10-30,
29 exist and whether to recommend mercy for the defendant. Upon the findings of the jury,
30 the judge shall fix a sentence within the limits prescribed by law.

31 (d) If the trial court is reversed on appeal because of error only in the presentence hearing,
32 the new trial which may be ordered shall apply only to the issue of punishment."

33 SECTION 3.

34 Said chapter is further amended by revising subsection (c) of Code Section 17-10-6.1,
35 relating to punishment for serious violent offenders, as follows:

1 "17-10-31.

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

14 (b) Where a jury impaneled to determine sentence, in a case in which the state sought the
 15 death penalty, is unable to reach a unanimous verdict as to sentence, the court shall have
 16 the jury foreperson report the jury's verdict as to aggravating circumstances, if any, and the
 17 number of jurors who cast their vote for a sentence of death on the last ballot and the court
 18 shall sentence the defendant to imprisonment as provided by law."

19 **SECTION 6.**

20 Said chapter is further amended by repealing Code Section 17-10-31.1, relating to the
 21 requirement of a jury finding of aggravating circumstance and recommendation of sentence
 22 of death or life without parole, duties of the judge, and jury instruction on meaning of "life
 23 without parole" and "life imprisonment."

24 **SECTION 7.**

25 Said chapter is further amended by repealing Code Section 17-10-32.1, relating to sentencing
 26 of person subject to death penalty or life without parole upon a plea of guilty and the duties
 27 of the judge.

28 **SECTION 8.**

29 Except as provided in this section, the provisions of this Act shall apply only to those
 30 offenses committed after July 1, 2007. With express written consent of the state, a defendant
 31 whose offense was committed prior to July 1, 2007, may elect in writing to be sentenced
 32 under the provisions of this Act, provided that: (1) jeopardy for the offense charged has not
 33 attached or (2) the defendant has been sentenced to death but the conviction or sentence has

1 been reversed on appeal and the state is not barred from seeking prosecution after the
2 remand.

3 **SECTION 9.**

4 Except as provided in Section 8 of this Act, the amendment or repeal of a Code section by
5 this Act shall not affect any sentence imposed by any court of this state prior to July 1, 2007.

6 **SECTION 10.**

7 A person may be sentenced to life without parole without the prosecutor seeking the death
8 penalty under the laws of this state.

9 **SECTION 11.**

10 (a) This Act shall become effective on July 1, 2007, and shall apply to all crimes committed
11 on and after such date.

12 (b) The provisions of this Act shall not affect or abate the status as a crime of any such act
13 or omission which occurred prior to the effective date of the Act repealing, repealing and
14 reenacting, or amending such law, nor shall the prosecution of such crime be abated as a
15 result of such repeal, repeal and reenactment, or amendment.

16 **SECTION 12.**

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