

House Bill 197 (COMMITTEE SUBSTITUTE)

By: Representatives Fleming of the 117th, Lindsey of the 54th, and Hatfield of the 177th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated,
2 relating to the procedure for sentencing and imposition of punishment, so as to repeal
3 provisions allowing review of sentences of imprisonment for a period exceeding 12 years by
4 a three-judge panel, to provide for the disposition of cases currently under review or in the
5 pipeline for review, to provide duties and responsibilities of the president of The Council of
6 Superior Court Judges of Georgia with respect to abolishing the three-judge panel; to amend
7 Code Section 15-6-77 of the Official Code of Georgia Annotated, relating to fees in superior
8 court, so as to correct a cross-reference; to provide for related matters; to provide for an
9 effective date and applicability; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to the
13 procedure for sentencing and imposition of punishment, is amended by repealing and
14 reserving Code Section 17-10-6, relating to review of sentences of imprisonment for a period
15 exceeding 12 years by a three-judge panel, as follows:

16 "17-10-6.

17 ~~(a) In any case, except cases in which the death penalty is imposed or cases involving a~~
18 ~~serious violent felony as defined in subsection (a) of Code Section 17-10-6.1, in which a~~
19 ~~sentence of 12 or more years, or several consecutive sentences which total 12 or more~~
20 ~~years, has been fixed and imposed by a judge, without a jury, the defendant shall have the~~
21 ~~right to have the sentence or sentences reviewed by a panel of three superior court judges~~
22 ~~to determine whether the sentence or sentences so imposed are excessively harsh.~~
23 ~~Consideration shall be given in the review to the nature of the crime for which the~~
24 ~~defendant has been convicted and to the defendant's prior criminal record. Any defendant~~
25 ~~seeking a review of such sentence or sentences shall make application therefor within 30~~
26 ~~days of the date on which the sentence was imposed by a judge of the superior court or~~

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1 after the remittitur from the Court of Appeals or Supreme Court affirming the conviction
2 is made the judgment of the sentencing court, whichever occurs last. The application shall
3 be filed with the clerk of the superior court in which the sentence was imposed. Upon the
4 filing of an application the clerk shall transmit the same to the three-judge panel created
5 under this Code section within ten days of the date on which the application was filed. For
6 such service, the clerk shall receive the fees prescribed in Code Section 15-6-77 from the
7 funds of the county, except where the clerk is on a salary. It shall be the duty of the judge
8 imposing the sentence and any probation officer to transmit, within ten days of the filing
9 of an application for review of a sentence, a copy of any presentence or postsentence report
10 prepared by the probation officer, including the record of the defendant, to the three-judge
11 panel.

12 (b) For the purpose of reviewing sentences, as provided by this Code section, there is
13 created a panel of three superior court judges, to be appointed by the superior court judge
14 then serving as president of The Council of Superior Court Judges of Georgia. Judges so
15 appointed shall serve for a term of three months and until their successors are duly
16 appointed and qualified. Judges so appointed shall receive their actual expenses incurred
17 in the performance of their duties on the panel but shall receive no additional
18 compensation. The expenses shall be paid from funds appropriated to, or otherwise
19 available to, the judicial branch of state government. The panel shall be furnished offices,
20 supplies, materials, and secretarial assistance required for the performance of their duties
21 by the state. The panel shall meet at the state capital at such times as may be required for
22 the review of sentences, provided that all applications for review of sentences shall be
23 heard within three months from the date on which they are filed. No judge appointed to a
24 panel shall review a sentence which he has imposed on the trial of the case in the superior
25 court or participate in any such review. If such a case is brought before the panel, the
26 president of The Council of Superior Court Judges of Georgia shall have the authority to
27 appoint an additional superior court judge as a member of the panel for the review of the
28 case.

29 (c) The three-judge panel provided for by this Code section shall have the authority to
30 review sentences upon application of the defendants in such cases. In the review of the
31 sentences the defendant and the district attorney shall have the right to present written
32 argument relative to the sentence imposed and the harshness or justification thereof. If, in
33 the opinion of the panel, the sentence imposed by the trial judge is too harsh or severe in
34 light of all of the circumstances surrounding the case and the defendant, and in light of the
35 defendant's past history, the panel shall have the authority to issue an order reducing the
36 sentence originally imposed by the trial judge. The panel shall not have the authority,
37 however, to reduce any sentence to probation or to suspend any sentence. The panel shall

1 ~~not be required to file written opinions but shall file a copy of any order or remittitur~~
2 ~~reducing a sentence with the superior court which originally imposed the sentence.~~

3 ~~(d) The reduction of a sentence or the refusal to reduce a sentence by the panel shall not~~
4 ~~be reviewable. The provisions for review of sentences provided by this Code section shall~~
5 ~~not be deemed to affect the right to appeal or any practices, procedures, or time limitations~~
6 ~~relative to appeals to appellate courts. A defendant shall not have the right to file more than~~
7 ~~one application for a review of a sentence, and any order issued by the panel reducing or~~
8 ~~refusing to reduce any sentence covered by an application shall be binding on the defendant~~
9 ~~and the superior court which imposed the sentence.~~

10 ~~(e) This Code section shall not apply to cases in which the death penalty is imposed.~~

11 ~~(f) This Code section shall not apply to sentences imposed in misdemeanor cases or cases~~
12 ~~in which a life sentence is imposed for murder Reserved."~~

13 SECTION 2.

14 Said article is further amended by adding a new Code section to read as follows:

15 "17-10-6.3.

16 (a) As used in this Code section, the term 'three-judge panel' means the three-judge panel
17 that was created and existed pursuant to the former provisions of Code Section 17-10-6 as
18 it existed on June 30, 2007, which reviewed certain sentences to determine if a sentence
19 was excessively harsh and what relief, if any, should be given.

20 (b) The right of a defendant to have a sentence reviewed by a three-judge panel shall be
21 terminated for sentences imposed by a trial or appellate court on or after July 1, 2007. No
22 new application for review of a sentence shall be transmitted to the three-judge panel on
23 or after July 1, 2007, except for cases in which a sentence was imposed prior to July 1,
24 2007.

25 (c) No new application for review of a sentence shall be accepted by the three-judge panel
26 unless such application has been received by the three-judge panel on or before
27 September 1, 2007. Any sentence that has an application for review with the three-judge
28 panel pending on September 1, 2007, shall have such review completed by the three-judge
29 panel by November 1, 2008.

30 (d) It shall be the duty of the president of The Council of Superior Court Judges of Georgia
31 to cause all administrative measures which may be necessary to conclude the business of
32 the three-judge panel to be completed no later than January 1, 2009. Such administrative,
33 clerical, or secretarial personnel as may be assigned to provide support for the three-judge
34 panel may continue to be employed for the purpose of providing support to the president
35 of The Council of Superior Court Judges of Georgia until January 1, 2009.

1 (e) No later than January 1, 2009, all records and documents relating to the activities of
 2 the three-judge panels during the period July 1, 1974, through November 1, 2008, shall be
 3 transmitted to the Department of Archives and History for retention in accordance with
 4 Article 5 of Chapter 18 of Title 50, the 'Georgia Records Act.' All equipment, supplies, and
 5 materials which the president of The Council of Superior Court Judges of Georgia
 6 determines are excess or surplus shall be distributed by the president to the judges of the
 7 superior courts for use in the performance of their official duties. Any fees or expenses due
 8 to any clerk, superior court judge, or other person as a result of the three-judge panel shall
 9 be paid out of such funds as are appropriated for the operation of the superior courts during
 10 fiscal year 2009."

11 **SECTION 3.**

12 Code Section 15-6-77 of the Official Code of Georgia Annotated, relating to superior court
 13 fees, is amended by revising paragraph (5) of subsection (h) as follows:

14 "(5) Reserved ~~Preparation and transmission of documents to superior court~~
 15 ~~sentence review panel in accordance with Code Section 17-10-6, first copy, per~~
 16 ~~page~~.....- 1.50
 17 ~~Subsequent copies, per page~~.....- .50"

18 **SECTION 4.**

19 This Act shall become effective on July 1, 2007.

20 **SECTION 5.**

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