

## HOUSE SUBSTITUTE TO SENATE BILL 145

## 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. Where a statutory aggravating circumstance is not~~  
 9 ~~found or where a statutory circumstance is found but a recommendation of death is not~~  
 10 ~~made, the jury shall decide whether to recommend a sentence of life imprisonment without~~  
 11 ~~parole or life imprisonment with the possibility of parole. Unless the jury trying the case~~  
 12 makes a finding of at least one statutory aggravating circumstance and recommends the  
 13 death sentence in its verdict, the court shall not sentence the defendant to death, provided  
 14 that no such finding of statutory aggravating circumstance shall be necessary in offenses  
 15 of treason or aircraft hijacking. This Code section shall not affect a sentence when the case  
 16 is tried without a jury or when the judge accepts a plea of guilty.

17 (b) During the sentencing phase before a jury, counsel for the state and the accused may  
 18 present argument and the trial judge may instruct the jury:

19 (1) That 'life without parole' means that the defendant shall be incarcerated for the  
 20 remainder of his or her natural life and shall not be eligible for parole unless such person  
 21 is subsequently adjudicated to be innocent of the offense for which he or she was  
 22 sentenced; and

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

26 (c) If the jury is unable to reach a unanimous verdict as to sentence, the judge shall inquire  
 27 of the foreperson what the jury's vote for sentence was upon their last vote. Thereafter, the  
 28 judge shall dismiss the jury and shall impose a sentence of death, imprisonment for life  
 29 without parole, or life imprisonment with the possibility of parole; provided, however, that  
 30 the judge may only impose a sentence of death if at least ten of the jurors cast their vote for  
 31 a sentence of death."

## 32 SECTION 6.

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

**SECTION 7.**

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

**SECTION 8.**

Except as provided in this section, the provisions of this Act shall apply only to those offenses committed after July 1, 2008. With express written consent of the state, a defendant whose offense was committed prior to July 1, 2008, may elect in writing to be sentenced under the provisions of this Act, provided that: (1) jeopardy for the offense charged has not attached or (2) the defendant has been sentenced to death but the conviction or sentence has been reversed on appeal and the state is not barred from seeking prosecution after the remand.

**SECTION 9.**

Except as provided in Section 8 of this Act, the amendment or repeal of a Code section by this Act shall not affect any sentence imposed by any court of this state prior to July 1, 2008.

**SECTION 10.**

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

**SECTION 11.**

(a) This Act shall become effective on July 1, 2008, and shall apply to all crimes committed on and after such date and except as provided in Section 8 of this Act, the law set forth in Section 2, and Sections 3 through 7 of this Act as it existed on June 30, 2008, shall apply to all offenses committed on and before June 30, 2008.

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

**SECTION 12.**

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