

Senate Bill 13

By: Senators Smith of the 52nd, Cowser of the 46th, Tarver of the 22nd, Reed of the 35th, Hamrick of the 30th and others

AS PASSED SENATE

**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:

26 "17-10-2.

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

34 (2) The judge shall also hear argument by the ~~defendant~~ accused or the ~~defendant's~~
 35 accused's counsel and the prosecuting attorney, as provided by law, regarding the
 36 punishment to be imposed. Except in cases where the death penalty may be imposed, the
 37 prosecuting attorney shall open and conclude the argument. In cases where the death
 38 penalty may be imposed, the prosecuting attorney shall open and the ~~defendant~~ accused
 39 or the ~~defendant's~~ accused's counsel shall conclude the argument.

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

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

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

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

58 **SECTION 3.**

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

61 "(c)(1) Except as otherwise provided in subsection (c) of Code Section 42-9-39, for a
 62 first conviction of a serious violent felony in which the ~~defendant~~ accused has been
 63 sentenced to life imprisonment, that person shall not be eligible for any form of parole
 64 or early release administered by the State Board of Pardons and Paroles until that person
 65 has served a minimum of 30 years in prison. The minimum term of imprisonment shall
 66 not be reduced by any earned time, early release, work release, leave, or other
 67 sentence-reducing measures under programs administered by the Department of
 68 Corrections.

69 (2) For a first conviction of a serious violent felony in which the ~~defendant~~ accused has
 70 been sentenced to death but the sentence of death has been commuted to life
 71 imprisonment, that person shall not be eligible for any form of parole or early release
 72 administered by the State Board of Pardons and Paroles until that person has served a
 73 minimum of 30 years in prison. The minimum term of imprisonment shall not be reduced
 74 by any earned time, early release, work release, leave, or other sentence-reducing
 75 measures under programs administered by the Department of Corrections.

76 (3) For a first conviction of a serious violent felony in which the accused has been
 77 sentenced to imprisonment for life without parole, that person shall not be eligible for any
 78 form of parole or early release administered by the State Board of Pardons and Paroles
 79 or for any earned time, early release, work release, leave, or other sentence-reducing
 80 measures under programs administered by the Department of Corrections.

81 (4) Except as otherwise provided in this subsection, any ~~Any~~ sentence imposed for the
 82 first conviction of any serious violent felony ~~other than a sentence of life imprisonment~~
 83 ~~or life without parole or death~~ shall be served in its entirety as imposed by the sentencing
 84 court and shall not be reduced by any form of parole or early release administered by the
 85 State Board of Pardons and Paroles or by any earned time, early release, work release,
 86 leave, or other sentence-reducing measures under programs administered by the
 87 Department of Corrections, the effect of which would be to reduce the period of
 88 incarceration ordered by the sentencing court."

89 **SECTION 4.**

90 Said chapter is further amended by repealing Code Section 17-10-30.1, relating to
 91 imprisonment for life without parole and finding of statutory aggravating circumstance
 92 required.

93

SECTION 5.

94 Said chapter is further amended by revising Code Section 17-10-31, relating to the
 95 requirement of a jury finding aggravating circumstance and recommendation of death penalty
 96 prior to imposition, as follows:

97 "17-10-31.

98 (a) Where, upon a trial by jury, a person is convicted of an offense which may be
 99 punishable by death, a sentence of death shall not be imposed unless the jury verdict
 100 includes a finding of at least one statutory aggravating circumstance and a recommendation
 101 that such sentence be imposed. Where a statutory aggravating circumstance is found and
 102 a recommendation of death is made, the court shall sentence the ~~defendant~~ accused to
 103 death. ~~Where a sentence of death is not recommended by the jury, the court shall sentence~~
 104 ~~the defendant to imprisonment as provided by law. Where a statutory aggravating~~
 105 ~~circumstance is not found or where a statutory circumstance is found but a recommendation~~
 106 ~~of death is not made, the jury shall decide whether to recommend a sentence of life~~
 107 ~~imprisonment without parole or life imprisonment with the possibility of parole.~~ Unless
 108 the jury trying the case makes a finding of at least one statutory aggravating circumstance
 109 and recommends the death sentence in its verdict, the court shall not sentence the ~~defendant~~
 110 accused to death, provided that no such finding of statutory aggravating circumstance shall
 111 be necessary in offenses of treason or aircraft hijacking. This Code section shall not affect
 112 a sentence when the case is tried without a jury or when the judge accepts a plea of guilty.

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

115 (1) That 'life without parole' means that the accused shall be incarcerated for the
 116 remainder of his or her natural life and shall not be eligible for parole unless such person
 117 is subsequently adjudicated to be not guilty of the offense for which he or she was
 118 sentenced; and

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

121 (c) If the jury is unable to reach a unanimous verdict as to sentence, the judge shall dismiss
 122 the jury and shall impose a sentence of either life imprisonment or imprisonment for life
 123 without parole."

124

SECTION 6.

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

129 **SECTION 7.**

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

133 **SECTION 8.**

134 Except as provided in this section, the provisions of this Act shall apply only to those
135 offenses committed after July 1, 2009. With express written consent of the state, an accused
136 whose offense was committed prior to July 1, 2009, may elect in writing to be sentenced
137 under the provisions of this Act, provided that: (1) jeopardy for the offense charged has not
138 attached or (2) the accused has been sentenced to death but the conviction or sentence has
139 been reversed on appeal and the state is not barred from seeking prosecution after the
140 remand.

141 **SECTION 9.**

142 Except as provided in Section 8 of this Act, the amendment or repeal of a Code section by
143 this Act shall not affect any sentence imposed by any court of this state prior to July 1, 2009.

144 **SECTION 10.**

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

147 **SECTION 11.**

148 (a) This Act shall become effective on July 1, 2009, and shall apply to all crimes committed
149 on and after such date and except as provided in Section 8 of this Act, the law set forth in
150 Section 2, and Sections 3 through 7 of this Act as it existed on June 30, 2009, shall apply to
151 all offenses committed on and before June 30, 2009.

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

156 **SECTION 12.**

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