

Senate Bill 501

By: Senators Strickland of the 17th, Jordan of the 6th, Cowser of the 46th, Tillery of the 19th and Parent of the 42nd

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 procedure for sentencing and imposition of punishment, so as to authorize a  
3 sentencing court to resentence a defendant, upon a motion by the prosecuting attorney and  
4 upon determining that the interest of justice would not be served by the defendant's continued  
5 incarceration, subject to conditions; to provide for the application of the "Victims' Bill of  
6 Rights"; to provide for related matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to  
10 procedure for sentencing and imposition of punishment, is amended by revising  
11 subsection (f) of Code Section 17-10-1, relating to fixing of sentence, suspension or  
12 probation of sentence, change in sentence, eligibility for parole, prohibited modifications,  
13 and exceptions, as follows:

14 "(f)(1) Except as provided in paragraph (2) of this subsection, within ~~Within~~ one year of  
15 the date upon which the sentence is imposed, or within 120 days after receipt by the  
16 sentencing court of the remittitur upon affirmance of the judgment after direct appeal,

17 whichever is later, the court imposing the sentence has the jurisdiction, power, and  
18 authority to correct or reduce the sentence and to suspend or probate all or any part of the  
19 sentence imposed. The time periods prescribed in this subsection require the defendant  
20 to file a motion within such time periods; however, the court shall not be constrained to  
21 issue its order or hear the matter within such time periods.

22 (2) Upon a motion filed by the prosecuting attorney, the sentencing court shall have the  
23 jurisdiction, power, and authority to impose a new sentence and to suspend or probate all  
24 or any part of the sentence imposed if the sentencing court determines the interest of  
25 justice would not be served by the defendant's continued incarceration; provided,  
26 however, that the new sentence, if any, shall be no greater than the initial sentence. When  
27 determining if a new sentence is warranted, the sentencing court shall consider  
28 postconviction factors, including, but not limited to, the defendant's disciplinary record  
29 and record of rehabilitation while incarcerated, the defendant's age, the amount of time  
30 the defendant has served, if the defendant has a diminished physical condition that  
31 reduces the defendant's risk for future violence, and evidence that reflects that  
32 circumstances have changed since the defendant's original sentencing so that the  
33 defendant's continued incarceration is no longer in the interest of justice.

34 (3) Prior to entering any order correcting, reducing, or modifying any sentence, the court  
35 shall afford notice and an opportunity for a hearing to the prosecuting attorney.

36 (4) Victims shall be afforded all rights as outlined in Chapter 17 of this title, the 'Crime  
37 Victims' Bill of Rights.'

38 (5) Any order modifying a sentence which is entered without notice and an opportunity  
39 for a hearing as provided in this subsection shall be void. This subsection shall not limit  
40 any other jurisdiction granted to the court in this Code section or as provided for in  
41 subsection (g) of Code Section 42-8-34."

42

**SECTION 2.**

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