Senate Bill 13

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

AS PASSED

A BILL TO BE ENTITLED

AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is amended by revising subsection (d) of Code Section 16-5-1, relating to murder, as follows:

"(d) A person convicted of the offense of murder shall be punished by death<u>, by imprisonment for life without parole,</u> or by imprisonment for life."

SECTION 2.

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

″17-10-2.

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

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

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

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

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

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

SECTION 3.

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

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

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

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

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

SECTION 4.

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

SECTION 5.

Said chapter is further amended by revising Code Section 17-10-31, relating to the

requirement of a jury finding aggravating circumstance and recommendation of death penalty prior to imposition, as follows:

"17-10-31.

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

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

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

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

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

SECTION 6.

Said chapter is further amended by repealing Code Section 17-10-31.1, relating to the requirement of a jury finding of aggravating circumstance and recommendation of sentence of death or life without parole, duties of the judge, and jury instruction on meaning of "life 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 the effective date of this Act. With express written consent of the state, an accused whose offense was committed prior to the effective date of this Act 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 accused 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 the effective date of this Act.

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 upon its approval by the Governor or upon its becoming law without such approval and shall apply to all crimes committed on and after such date, and except as provided in Section 8 of this Act, the law as set forth in Section 2 and in Sections 3 through 7 of this Act as it existed prior to the effective date of this Act shall apply to all offenses committed on and before such date.

(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.